

**UTAH RETIREMENT SYSTEM AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Don L. Ipson**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**Committee Note:**

The Retirement and Independent Entities Interim Committee recommended this bill.

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending its provisions.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ amends retiree reemployment provisions by prohibiting a participating employer from making a retirement related contribution that exceeds the normal cost rate for all reemployed retirees not just full-time employees;
- ▶ increases the amount that is required to be corrected in payments made by the office if an error is discovered that results in a modification of the benefit amount;
- ▶ amends provisions related to benefit information forms that must be signed by each employee;
- ▶ allows the retirement office to communicate with members, beneficiaries, participating employers, and others through electronic means;
- ▶ provides that an employee of an institution of higher education who participates in other retirement systems is excluded from membership in the Utah Retirement Systems;



- 28           ▶ expands the offsets used in determining long-term disability benefits to include any
- 29 benefit earned for the same period of disability as the benefit was based;
- 30           ▶ clarifies the date of termination of long-term disability benefits for exempted
- 31 employees and volunteer firefighters;
- 32           ▶ establishes investment requirements for employer contributions made on behalf of
- 33 certain employees who are exempt from the four-year vesting requirements in the
- 34 Tier II systems;
- 35           ▶ provides that employees who are exempt from the four-year vesting requirement in
- 36 the Tier II systems and who terminate before the one-year election period are
- 37 entitled to all employer contributions and associated investment gains and losses;
- 38 and
- 39           ▶ makes technical changes.

40 **Money Appropriated in this Bill:**

41           None

42 **Other Special Clauses:**

43           None

44 **Utah Code Sections Affected:**

45 **AMENDS:**

- 46           **49-11-102**, as last amended by Laws of Utah 2012, Chapter 298
- 47           **49-11-504**, as last amended by Laws of Utah 2011, Chapter 439
- 48           **49-11-607**, as last amended by Laws of Utah 2003, Chapter 240
- 49           **49-11-616**, as last amended by Laws of Utah 2012, Chapter 298
- 50           **49-11-617**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 51           **49-12-203**, as last amended by Laws of Utah 2009, Chapter 51
- 52           **49-12-204**, as last amended by Laws of Utah 2010, Chapter 158
- 53           **49-13-203**, as last amended by Laws of Utah 2010, Chapter 280
- 54           **49-13-204**, as last amended by Laws of Utah 2010, Chapter 158
- 55           **49-21-402**, as last amended by Laws of Utah 2012, Chapter 298
- 56           **49-21-403**, as last amended by Laws of Utah 2011, Chapters 366 and 439
- 57           **49-22-203**, as enacted by Laws of Utah 2010, Chapter 266
- 58           **49-22-401**, as last amended by Laws of Utah 2012, Chapter 298

59           **49-23-401**, as last amended by Laws of Utah 2012, Chapter 298



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

62           Section 1. Section **49-11-102** is amended to read:

63           **49-11-102. Definitions.**

64           As used in this title:

65           (1) (a) "Active member" means a member who is employed or who has been employed  
66 by a participating employer within the previous 120 days.

67           (b) "Active member" does not include retirees.

68           (2) "Actuarial equivalent" means a benefit of equal value when computed upon the  
69 basis of mortality tables as recommended by the actuary and adopted by the executive director,  
70 including regular interest.

71           (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and  
72 adopted by the board upon which the funding of system costs and benefits are computed.

73           (4) (a) "Agency" means:

74           (i) a department, division, agency, office, authority, commission, board, institution, or  
75 hospital of the state;

76           (ii) a county, municipality, school district, local district, or special service district;

77           (iii) a state college or university; or

78           (iv) any other participating employer.

79           (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a  
80 subdivision of another entity listed under Subsection (4)(a).

81           (5) "Allowance" or "retirement allowance" means the pension plus the annuity,  
82 including any cost of living or other authorized adjustments to the pension and annuity.

83           (6) "Alternate payee" means a member's former spouse or family member eligible to  
84 receive payments under a Domestic Relations Order in compliance with Section 49-11-612.

85           (7) "Amortization rate" means the board certified percent of salary required to amortize  
86 the unfunded actuarial accrued liability in accordance with policies established by the board  
87 upon the advice of the actuary.

88           (8) "Annuity" means monthly payments derived from member contributions.

89           (9) "Appointive officer" means an employee appointed to a position for a definite and

90 fixed term of office by official and duly recorded action of a participating employer whose  
91 appointed position is designated in the participating employer's charter, creation document, or  
92 similar document, and:

93 (a) who earns \$500 or more per month, indexed as of January 1, 1990, as provided in  
94 Section 49-12-407 for a Tier I appointive officer; and

95 (b) whose appointive position is full-time as certified by the participating employer for  
96 a Tier II appointive officer.

97 (10) (a) "At-will employee" means a person who is employed by a participating  
98 employer and:

99 (i) who is not entitled to merit or civil service protection and is generally considered  
100 exempt from a participating employer's merit or career service personnel systems;

101 (ii) whose on-going employment status is entirely at the discretion of the person's  
102 employer; or

103 (iii) who may be terminated without cause by a designated supervisor, manager, or  
104 director.

105 (b) "At-will employee" does not include a career employee who has obtained a  
106 reasonable expectation of continued employment based on inclusion in a participating  
107 employer's merit system, civil service protection system, or career service personnel systems,  
108 policies, or plans.

109 (11) "Beneficiary" means any person entitled to receive a payment under this title  
110 through a relationship with or designated by a member, participant, covered individual, or  
111 alternate payee of a defined contribution plan.

112 (12) "Board" means the Utah State Retirement Board established under Section  
113 49-11-202.

114 (13) "Board member" means a person serving on the Utah State Retirement Board as  
115 established under Section 49-11-202.

116 (14) "Certified contribution rate" means the board certified percent of salary paid on  
117 behalf of an active member to the office to maintain the system on a financially and actuarially  
118 sound basis.

119 (15) "Contributions" means the total amount paid by the participating employer and the  
120 member into a system or to the Utah Governors' and Legislators' Retirement Plan under

121 Chapter 19, Utah Governors' and Legislators' Retirement Act.

122 (16) "Council member" means a person serving on the Membership Council  
123 established under Section 49-11-202.

124 (17) "Covered individual" means any individual covered under Chapter 20, Public  
125 Employees' Benefit and Insurance Program Act.

126 (18) "Current service" means covered service as defined in [~~Chapters 12, 13, 14, 15,~~  
127 ~~16, 17, 18, and 19.~~];

128 (a) Chapter 12, Public Employees' Contributory Retirement Act;

129 (b) Chapter 13, Public Employees' Noncontributory Retirement Act;

130 (c) Chapter 14, Public Safety Contributory Retirement Act;

131 (d) Chapter 15, Public Safety Noncontributory Retirement Act;

132 (e) Chapter 16, Firefighters' Retirement Act;

133 (f) Chapter 17, Judges' Contributory Retirement Act;

134 (g) Chapter 18, Judges' Noncontributory Retirement Act; and

135 (h) Chapter 19, Governors' and Legislators' Retirement Act.

136 (19) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a  
137 system or plan offered under this title to provide a specified allowance to a retiree or a retiree's  
138 spouse after retirement that is based on a set formula involving one or more of the following  
139 factors:

140 (a) years of service;

141 (b) final average monthly salary; or

142 (c) a retirement multiplier.

143 (20) "Defined contribution" or "defined contribution plan" means any defined  
144 contribution plan or deferred compensation plan authorized under the Internal Revenue Code  
145 and administered by the board.

146 (21) "Educational institution" means a political subdivision or instrumentality of the  
147 state or a combination thereof primarily engaged in educational activities or the administration  
148 or servicing of educational activities, including:

149 (a) the State Board of Education and its instrumentalities;

150 (b) any institution of higher education and its branches;

151 (c) any school district and its instrumentalities;

- 152 (d) any vocational and technical school; and
- 153 (e) any entity arising out of a consolidation agreement between entities described under
- 154 this Subsection (21).
- 155 (22) "Elected official":
- 156 (a) means a person elected to a state office, county office, municipal office, school
- 157 board or school district office, local district office, or special service district office;
- 158 (b) includes a person who is appointed to serve an unexpired term of office described
- 159 under Subsection (22)(a); and
- 160 (c) does not include a judge or justice who is subject to a retention election under
- 161 Section 20A-12-201.
- 162 (23) (a) "Employer" means any department, educational institution, or political
- 163 subdivision of the state eligible to participate in a government-sponsored retirement system
- 164 under federal law.
- 165 (b) "Employer" may also include an agency financed in whole or in part by public
- 166 funds.
- 167 (24) "Exempt employee" means an employee working for a participating employer:
- 168 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,
- 169 49-14-203, 49-15-203, or 49-16-203; and
- 170 (b) for whom a participating employer is not required to pay contributions or
- 171 nonelective contributions.
- 172 (25) "Final average monthly salary" means the amount computed by dividing the
- 173 compensation received during the final average salary period under each system by the number
- 174 of months in the final average salary period.
- 175 (26) "Fund" means any fund created under this title for the purpose of paying benefits
- 176 or costs of administering a system, plan, or program.
- 177 (27) (a) "Inactive member" means a member who has not been employed by a
- 178 participating employer for a period of at least 120 days.
- 179 (b) "Inactive member" does not include retirees.
- 180 (28) (a) "Initially entering" means hired, appointed, or elected for the first time, in
- 181 current service as a member with any participating employer.
- 182 (b) "Initially entering" does not include a person who has any prior service credit on

183 file with the office.

184 (c) "Initially entering" includes an employee of a participating employer, except for an  
185 employee that is not eligible under a system or plan under this title, who:

186 (i) does not have any prior service credit on file with the office;

187 (ii) is covered by a retirement plan other than a retirement plan created under this title;

188 and

189 (iii) moves to a position with a participating employer that is covered by this title.

190 (29) "Institution of higher education" means an institution described in Section

191 53B-2-101.

192 [~~29~~] (30) (a) "Member" means a person, except a retiree, with contributions on  
193 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,  
194 Utah Governors' and Legislators' Retirement Act, or with a terminated system.

195 (b) "Member" also includes leased employees within the meaning of Section 414(n)(2)  
196 of the Internal Revenue Code, if the employees have contributions on deposit with the office.  
197 If leased employees constitute less than 20% of the participating employer's work force that is  
198 not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code,  
199 "member" does not include leased employees covered by a plan described in Section 414(n)(5)  
200 of the federal Internal Revenue Code.

201 [~~30~~] (31) "Member contributions" means the sum of the contributions paid to a  
202 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if  
203 allowed by a system, and which are made by:

204 (a) the member; and

205 (b) the participating employer on the member's behalf under Section 414(h) of the  
206 Internal Revenue Code.

207 [~~31~~] (32) "Nonelective contribution" means an amount contributed by a participating  
208 employer into a participant's defined contribution account.

209 [~~32~~] (33) "Normal cost rate":

210 (a) means the percent of salary that is necessary for a retirement system that is fully  
211 funded to maintain its fully funded status; and

212 (b) is determined by the actuary based on the assumed rate of return established by the  
213 board.

214            [~~(33)~~] (34) "Office" means the Utah State Retirement Office.

215            [~~(34)~~] (35) "Participant" means an individual with voluntary deferrals or nonelective  
216 contributions on deposit with the defined contribution plans administered under this title.

217            [~~(35)~~] (36) "Participating employer" means a participating employer, as defined by  
218 Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'  
219 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,  
220 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'  
221 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, and Chapter 18, Judges'  
222 Noncontributory Retirement Act, or an agency financed in whole or in part by public funds  
223 which is participating in a system or plan as of January 1, 2002.

224            [~~(36)~~] (37) "Pension" means monthly payments derived from participating employer  
225 contributions.

226            [~~(37)~~] (38) "Plan" means the Utah Governors' and Legislators' Retirement Plan created  
227 by Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees'  
228 Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution  
229 Plan, the New Public Safety and Firefighter Tier II Defined Contribution Plan created by  
230 Chapter 23, Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created  
231 under Section 49-11-801.

232            [~~(38)~~] (39) (a) "Political subdivision" means any local government entity, including  
233 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is  
234 legally separate and distinct from the state and only if its employees are not by virtue of their  
235 relationship to the entity employees of the state.

236            (b) "Political subdivision" includes local districts, special service districts, or  
237 authorities created by the Legislature or by local governments, including the office.

238            (c) "Political subdivision" does not include a project entity created under Title 11,  
239 Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.

240            [~~(39)~~] (40) "Program" means the Public Employees' Insurance Program created under  
241 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'  
242 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term  
243 Disability Act.

244            [~~(40)~~] (41) "Public funds" means those funds derived, either directly or indirectly, from



245 public taxes or public revenue, dues or contributions paid or donated by the membership of the  
246 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,  
247 the governmental, educational, and social programs and systems of the state or its political  
248 subdivisions.

249 ~~[(41)]~~ (42) "Qualified defined contribution plan" means a defined contribution plan  
250 that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

251 ~~[(42)]~~ (43) (a) "Reemployed," "reemploy," or "reemployment" means work or service  
252 performed after retirement, in exchange for compensation.

253 (b) Reemployment includes work or service performed on a contract if the retiree is:

254 (i) listed as the contractor; or

255 (ii) an owner, partner, or principle of the contractor.

256 ~~[(43)]~~ (44) "Refund interest" means the amount accrued on member contributions at a  
257 rate adopted by the board.

258 ~~[(44)]~~ (45) "Retiree" means an individual who has qualified for an allowance under this  
259 title.

260 ~~[(45)]~~ (46) "Retirement" means the status of an individual who has become eligible,  
261 applies for, and is entitled to receive an allowance under this title.

262 ~~[(46)]~~ (47) "Retirement date" means the date selected by the member on which the  
263 member's retirement becomes effective with the office.

264 ~~[(47)]~~ (48) "Retirement related contribution":

265 (a) means any employer payment to any type of retirement plan or program made on  
266 behalf of an employee; and

267 (b) does not include Social Security payments or Social Security substitute payments  
268 made on behalf of an employee.

269 ~~[(48)]~~ (49) "Service credit" means:

270 (a) the period during which an employee is employed and compensated by a  
271 participating employer and meets the eligibility requirements for membership in a system or the  
272 Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are  
273 paid to the office; and

274 (b) periods of time otherwise purchasable under this title.

275 ~~[(49)]~~ (50) "System" means the individual retirement systems created by Chapter 12,

276 Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'  
 277 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,  
 278 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'  
 279 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges'  
 280 Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement  
 281 Act, the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 22, Part  
 282 3, Tier II Hybrid Retirement System, and the defined benefit portion of the Tier II Hybrid  
 283 Retirement System under Chapter 23, Part 3, Tier II Hybrid Retirement System.

284 ~~[(50)]~~ (51) "Tier I" means a system or plan under this title for which an employee is  
 285 eligible to participate if the employee initially enters regular full-time employment before July  
 286 1, 2011.

287 ~~[(51)]~~ (52) (a) "Tier II" means a system or plan under this title provided in lieu of a  
 288 Tier I system or plan for which an employee is eligible to participate, if the employee initially  
 289 enters regular full-time employment on or after July 1, 2011.

290 (b) "Tier II" includes:

291 (i) the Tier II hybrid system established under:

292 (A) Chapter 22, Part 3, Tier II Hybrid Retirement System; or

293 (B) Chapter 23, Part 3, Tier II Hybrid Retirement System; and

294 (ii) the Tier II Defined Contribution Plan (Tier II DC Plan) established under:

295 (A) Chapter 22, Part 4, Tier II Defined Contribution Plan; or

296 (B) Chapter 23, Part 4, Tier II Defined Contribution Plan.

297 ~~[(52)]~~ (53) "Unfunded actuarial accrued liability" or "UAAL":

298 (a) is determined by the system's actuary; and

299 (b) means the excess, if any, of the accrued liability of a retirement system over the  
 300 actuarial value of its assets.

301 ~~[(53)]~~ (54) "Voluntary deferrals" means an amount contributed by a participant into  
 302 that participant's defined contribution account.

303 Section 2. Section **49-11-504** is amended to read:

304 **49-11-504. Reemployment of a retiree -- Restrictions.**

305 (1) As used in this section, "full-time" means:

306 (a) employment requiring 20 or more hours of work per week; or

- 307 (b) at least a half-time teaching contract.
- 308 (2) (a) Except for the provisions of Subsection (3), the provisions of this section do not  
309 apply to a person who is subject to the provisions of Section 49-11-505.
- 310 (b) This section does not apply to employment as an elected official.
- 311 (3) A person who is not a retiree under this title is not subject to any postretirement  
312 restrictions under this title.
- 313 (4) A retiree of an agency who is reemployed may not earn additional service credit, if  
314 the retiree is reemployed by:
- 315 (a) a different agency; or
- 316 (b) the same agency after six months from the retirement date.
- 317 (5) A retiree of an agency who is reemployed on a full-time basis by the same agency  
318 within six months of the date of retirement is subject to the following:
- 319 (a) the agency shall immediately notify the office;
- 320 (b) the office shall cancel the retiree's allowance and reinstate the retiree to active  
321 member status;
- 322 (c) the allowance cancellation and reinstatement to active member status is effective on  
323 the first day of the month following the date of reemployment;
- 324 (d) the reinstated retiree may not retire again with a recalculated benefit for a two-year  
325 period from the date of cancellation of the original allowance, and if the retiree retires again  
326 within the two-year period, the original allowance shall be resumed; and
- 327 (e) a reinstated retiree retiring after the two-year period shall be credited with the  
328 service credit in the retiree's account at the time of the first retirement and from that time shall  
329 be treated as a member of a system, including the accrual of additional service credit, but  
330 subject to recalculation of the allowance under Subsection (9).
- 331 (6) A retiree of an agency who is reemployed by the same agency within six months of  
332 retirement on a less than full-time basis by the same agency is subject to the following:
- 333 (a) the retiree may earn, without penalty, compensation from that position which is not  
334 in excess of the exempt earnings permitted by Social Security;
- 335 (b) if a retiree receives compensation in a calendar year in excess of the Social Security  
336 limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;
- 337 (c) the effective date of a suspension and reinstatement of an allowance shall be set by

338 the office; and

339 (d) any suspension of a retiree's allowance under this Subsection (6) shall be applied  
340 on a calendar year basis.

341 (7) For six months immediately following retirement, the retiree and participating  
342 employer who are subject to Subsection (6) shall:

343 (a) maintain an accurate record of gross earnings in employment;

344 (b) report the gross earnings at least monthly to the office;

345 (c) immediately notify the office in writing of any postretirement earnings under  
346 Subsection (6); and

347 (d) immediately notify the office in writing whether postretirement earnings equal or  
348 exceed the exempt earnings under Subsection (6).

349 (8) (a) If a participating employer hires a retiree, [~~on a full-time basis, who may not~~  
350 ~~earn additional service credit under Subsection (4);~~] the participating employer may not make a  
351 retirement related contribution in an amount that exceeds the normal cost rate as defined under  
352 Section 49-11-102 on behalf of the retiree under Subsections (8)(b) and (c).

353 (b) The contributions under Subsection (8)(a) are not required, but if paid, shall be paid  
354 to a retiree-designated:

355 (i) qualified defined contribution plan administered by the board, if the participating  
356 employer participates in a qualified defined contribution plan administered by the board; or

357 (ii) qualified defined contribution plan offered by the participating employer if the  
358 participating employer does not participate in a qualified defined contribution plan  
359 administered by the board.

360 (c) Notwithstanding the provisions of Subsection (8)(b), if an employer is not  
361 participating in a qualified defined contribution plan administered by the board, the employer  
362 may elect to pay the contributions under Subsection (8)(a) to a deferred compensation plan  
363 administered by the board.

364 (9) A retiree who has returned to work, accrued additional service credit, and again  
365 retires shall have the retiree's allowance recalculated using:

366 (a) the formula in effect at the date of the retiree's original retirement for all service  
367 credit accrued prior to that date; and

368 (b) the formula in effect at the date of the subsequent retirement for all service credit

369 accrued between the first and subsequent retirement dates.

370 (10) The board may make rules to implement this section.

371 Section 3. Section **49-11-607** is amended to read:

372 **49-11-607. Determination of benefits -- Errors in records or calculations --**

373 **Correction of errors by the office.**

374 (1) After the retirement date, which shall be set by a member in the member's  
375 application for retirement, no alteration, addition, or cancellation of a benefit may be made  
376 except as provided in Subsections (2), (3), and (4) or other law.

377 (2) (a) Errors in the records or in the calculations of the office which result in an  
378 incorrect benefit to any member, retiree, participant, covered individual, alternate payee, or  
379 beneficiary shall be corrected by the office if the correction results in a modification of the  
380 benefit amount of [H] \$5 or more.

381 (b) Future payments shall be made to any member, retiree, participant, covered  
382 individual, alternate payee, or beneficiary to:

383 (i) pay the benefit to which the member or beneficiary was entitled; or

384 (ii) recover any overpayment.

385 (3) (a) Errors in the records or calculation of a participating employer which result in  
386 an incorrect benefit to a member, retiree, participant, covered individual, alternate payee, or  
387 beneficiary shall be corrected by the participating employer.

388 (b) If insufficient employer contributions have been received by the office, the  
389 participating employer shall pay any delinquent employer contributions, plus interest under  
390 Section 49-11-503, required by the office to maintain the system, plan, or program affected on  
391 an actuarially sound basis.

392 (c) If excess contributions have been received by the office, the contributions shall be  
393 refunded to the participating employer or member which paid the contributions.

394 (4) If a dispute exists between a participating employer and a member at the time of the  
395 member's retirement which will affect the member's benefit calculation, and notice of the  
396 dispute is given to the office prior to the calculation of a member's benefit, the benefit may be  
397 paid based on the member's retirement date and the records available and then recalculated  
398 upon settlement of the dispute.

399 Section 4. Section **49-11-616** is amended to read:

400 **49-11-616. Benefits information.**

401 (1) ~~(a)~~ The office shall provide [~~written general information~~] a form to each  
402 participating employer [~~concerning~~] providing:

403 (i) general information on the benefits available under this title[-]; and

404 (ii) a place for each employee to sign verifying that the employee has received the  
405 form.

406 (2) (a) A participating employer shall provide the [~~information~~] form under Subsection  
407 (1) to each eligible employee immediately upon:

408 (i) termination of service;

409 (ii) leave of absence;

410 (iii) commencement of long-term disability benefits; or

411 (iv) retirement.

412 (b) When received from a participating employer under this section, an employee shall  
413 sign the form under Subsection (1) verifying that the employee has received it.

414 [~~(b)~~] (c) (i) Each participating employer shall maintain the records necessary to  
415 demonstrate that each employee has received the [~~information outlined in~~] form under  
416 Subsection (1).

417 (ii) The records shall be made available to the office upon request.

418 [~~(3)~~] ~~(a) The office shall provide each participating employer with a form to be signed~~  
419 ~~by each employee which verifies that the employee has been given the information required by~~  
420 ~~this section.]~~

421 [~~(b) A copy of the signed form shall be immediately forwarded to the office by the~~  
422 ~~participating employer or the employee.]~~

423 Section 5. Section **49-11-617** is amended to read:

424 **49-11-617. Original documents.**

425 (1) At the reasonable discretion of the office, any document relating to this title may be  
426 treated as an original, whether created by photocopy, facsimile, e-mail, electronic transmission,  
427 imaging, or other technology.

428 (2) The office may communicate with participating employers, members, beneficiaries,  
429 and others through electronic means as determined appropriate by the office.

430 Section 6. Section **49-12-203** is amended to read:

431 **49-12-203. Exclusions from membership in system.**

432 (1) The following employees are not eligible for service credit in this system:

433 (a) An employee whose employment status is temporary in nature due to the nature or  
434 the type of work to be performed, provided that:435 (i) if the term of employment exceeds six months and the employee otherwise qualifies  
436 for service credit in this system, the participating employer shall report and certify to the office  
437 that the employee is a regular full-time employee effective the beginning of the seventh month  
438 of employment; or439 (ii) if an employee, previously terminated prior to being eligible for service credit in  
440 this system is reemployed within three months of termination by the same participating  
441 employer, the participating employer shall report and certify that the member is a regular  
442 full-time employee when the total of the periods of employment equals six months and the  
443 employee otherwise qualifies for service credit in this system.444 (b) (i) ~~[A current or future employee of a two-year or four-year college or university~~  
445 ~~who holds, or is entitled to hold, under Section 49-12-204, a retirement annuity contract]~~ An  
446 employee of an institution of higher education who participates in a retirement system with the  
447 Teachers' Insurance and Annuity Association of America or with any other public or private  
448 retirement system, organization, or company during any period in which required contributions  
449 based on compensation have been paid on behalf of the employee by the employer.450 (ii) The employee, upon cessation of the participating employer contributions, shall  
451 immediately become ~~[eligible]~~ ineligible for service credit in this system.

452 (c) An employee serving as an exchange employee from outside the state.

453 (d) An executive department head of the state, a member of the State Tax Commission,  
454 the Public Service Commission, and a member of a full-time or part-time board or commission  
455 who files a formal request for exemption.456 (e) An employee of the Department of Workforce Services who is covered under  
457 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.458 (f) (i) An employee who is employed on or after July 1, 2009 with an employer that has  
459 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection  
460 49-12-202(2)(c).

461 (ii) Notwithstanding the provisions of this Subsection (1)(f), any eligibility for service

462 credit earned by an employee under this chapter before July 1, 2009 is not affected under this  
463 Subsection (1)(f).

464 (2) Upon filing a written request for exemption with the office, the following  
465 employees shall be exempt from coverage under this system:

466 (a) a full-time student or the spouse of a full-time student and individuals employed in  
467 a trainee relationship;

468 (b) an elected official;

469 (c) an executive department head of the state, a member of the State Tax Commission,  
470 a member of the Public Service Commission, and a member of a full-time or part-time board or  
471 commission;

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

473 (e) an employee of the Governor's Office of Economic Development;

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

475 (g) an employee of the Governor's Office;

476 (h) an employee of the State Auditor's Office;

477 (i) an employee of the State Treasurer's Office;

478 (j) any other member who is permitted to make an election under Section 49-11-406;

479 (k) a person appointed as a city manager or chief city administrator or another person  
480 employed by a municipality, county, or other political subdivision, who is an at-will employee;  
481 and

482 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,  
483 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through  
484 membership in a labor organization that provides retirement benefits to its members.

485 (3) (a) Each participating employer shall prepare a list designating those positions  
486 eligible for exemption under Subsection (2).

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

489 (4) (a) In accordance with this section, a municipality, county, or political subdivision  
490 may not exempt more than 50 positions or a number equal to 10% of the employees of the  
491 municipality, county, or political subdivision whichever is lesser.

492 (b) A municipality, county, or political subdivision may exempt at least one regular



493 full-time employee.

494 (5) Each participating employer shall:

495 (a) file employee exemptions annually with the office; and

496 (b) update the employee exemptions in the event of any change.

497 (6) The office may make rules to implement this section.

498 Section 7. Section **49-12-204** is amended to read:

499 **49-12-204. Higher education employees' eligibility requirements -- Election**  
500 **between different retirement plans -- Classification requirements -- Transfer between**  
501 **systems -- One-time election window -- Rulemaking.**

502 (1) (a) A regular full-time employee of an institution of higher education who is  
503 eligible to participate in either this system or [~~in a retirement annuity contract~~] with the  
504 Teachers' Insurance and Annuity Association of America or with any other public or private  
505 retirement system, organization, or company, designated by the Board of Regents, shall, not  
506 later than January 1, 1979, elect to participate exclusively in this system or in an annuity  
507 contract allowed under this Subsection (1).

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

509 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired  
510 by an institution of higher education after January 1, 1979, may participate only in the  
511 retirement plan which attaches to the person's employment classification.

512 (b) Each institution of higher education shall prepare or amend existing employment  
513 classifications, under the direction of the Board of Regents, so that each classification is  
514 assigned with either:

515 (i) this system;

516 (ii) the Teachers' Insurance and Annuity Association of America; or

517 (iii) another public or private system, organization, or company designated by the  
518 Board of Regents.

519 (c) Notwithstanding a person's employment classification assignment under Subsection  
520 (2)(b), a regular full-time employee who begins employment with an institution of higher  
521 education on or after May 11, 2010, has a one-time irrevocable election to continue  
522 participation in this system, if the employee has service credit in this system before the date of  
523 employment.

524 (3) Notwithstanding an employment classification assignment change made under  
525 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after  
526 January 1, 1979, whose employment classification requires participation in this system may  
527 elect to continue participation in this system.

528 (4) A regular full-time employee hired by an institution of higher education after  
529 January 1, 1979, whose employment classification requires participation in this system shall  
530 participate in this system.

531 (5) (a) Notwithstanding any other provision of this section, a regular full-time  
532 employee of an institution of higher education shall have a one-time irrevocable election to  
533 participate in this system if the employee:

534 (i) was hired after January 1, 1979;

535 (ii) whose employment classification assignment under Subsection (2)(b) required  
536 participation in a retirement program other than this system; and

537 (iii) has service credit in a system under this title.

538 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.

539 (c) All forms required by the office must be completed and received by the office no  
540 later than June 30, 2010, for the election to participate in this system to be effective.

541 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher  
542 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue  
543 service credit in this system.

544 (6) A regular full-time employee of an institution of higher education who elects to be  
545 covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment  
546 while covered under another retirement program sponsored by the institution of higher  
547 education by complying with the requirements of Section 49-11-403.

548 (7) The board shall make rules to implement this section.

549 Section 8. Section **49-13-203** is amended to read:

550 **49-13-203. Exclusions from membership in system.**

551 (1) The following employees are not eligible for service credit in this system:

552 (a) An employee whose employment status is temporary in nature due to the nature or  
553 the type of work to be performed, provided that:

554 (i) if the term of employment exceeds six months and the employee otherwise qualifies

555 for service credit in this system, the participating employer shall report and certify to the office  
556 that the employee is a regular full-time employee effective the beginning of the seventh month  
557 of employment; and

558 (ii) if an employee, previously terminated prior to becoming eligible for service credit  
559 in this system, is reemployed within three months of termination by the same participating  
560 employer, the participating employer shall report and certify to the office that the member is a  
561 regular full-time employee when the total of the periods of employment equals six months and  
562 the employee otherwise qualifies for service credit in this system.

563 (b) (i) ~~[A current or future employee of a two-year or four-year college or university~~  
564 ~~who holds, or is entitled to hold, under Section 49-13-204, a retirement annuity contract]~~ An  
565 employee of an institution of higher education who participates in a retirement system with the  
566 Teachers' Insurance and Annuity Association of America or with any other public or private  
567 retirement system, organization, or company during any period in which required contributions  
568 based on compensation have been paid on behalf of the employee by the employer.

569 (ii) The employee, upon cessation of the participating employer contributions, shall  
570 immediately become ~~[eligible]~~ ineligible for service credit in this system.

571 (c) An employee serving as an exchange employee from outside the state.

572 (d) An executive department head of the state or a legislative director, senior executive  
573 employed by the governor's office, a member of the State Tax Commission, a member of the  
574 Public Service Commission, and a member of a full-time or part-time board or commission  
575 who files a formal request for exemption.

576 (e) An employee of the Department of Workforce Services who is covered under  
577 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

578 (f) (i) An employee who is employed with an employer that has elected to be excluded  
579 from participation in this system under Subsection 49-13-202(5), effective on or after the date  
580 of the employer's election under Subsection 49-13-202(5).

581 (ii) Notwithstanding the provisions of this Subsection (1)(f), any eligibility for service  
582 credit earned by an employee under this chapter before the date of the election under  
583 Subsection 49-13-202(5) is not affected under this Subsection (1)(f).

584 (2) Upon filing a written request for exemption with the office, the following  
585 employees shall be exempt from coverage under this system:

- 586 (a) a full-time student or the spouse of a full-time student and individuals employed in  
587 a trainee relationship;
- 588 (b) an elected official;
- 589 (c) an executive department head of the state, a member of the State Tax Commission,  
590 a member of the Public Service Commission, and a member of a full-time or part-time board or  
591 commission;
- 592 (d) an employee of the Governor's Office of Planning and Budget;
- 593 (e) an employee of the Governor's Office of Economic Development;
- 594 (f) an employee of the Commission on Criminal and Juvenile Justice;
- 595 (g) an employee of the Governor's Office;
- 596 (h) an employee of the State Auditor's Office;
- 597 (i) an employee of the State Treasurer's Office;
- 598 (j) any other member who is permitted to make an election under Section 49-11-406;
- 599 (k) a person appointed as a city manager or chief city administrator or another person  
600 employed by a municipality, county, or other political subdivision, who is an at-will employee;
- 601 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,  
602 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through  
603 membership in a labor organization that provides retirement benefits to its members; and
- 604 (m) an employee of the Utah Science Technology and Research Initiative created under  
605 Title 63M, Chapter 2, Utah Science Technology and Research [~~and~~] Governing Authority Act.
- 606 (3) (a) Each participating employer shall prepare a list designating those positions  
607 eligible for exemption under Subsection (2).
- 608 (b) An employee may not be exempted unless the employee is employed in a position  
609 designated by the participating employer.
- 610 (4) (a) In accordance with this section, a municipality, county, or political subdivision  
611 may not exempt more than 50 positions or a number equal to 10% of the employees of the  
612 municipality, county, or political subdivision, whichever is lesser.
- 613 (b) A municipality, county, or political subdivision may exempt at least one regular  
614 full-time employee.
- 615 (5) Each participating employer shall:
- 616 (a) file employee exemptions annually with the office; and

617 (b) update the employee exemptions in the event of any change.

618 (6) The office may make rules to implement this section.

619 Section 9. Section **49-13-204** is amended to read:

620 **49-13-204. Higher education employees' eligibility requirements -- Election**  
621 **between different retirement plans -- Classification requirements -- Transfer between**  
622 **systems -- One-time election window -- Rulemaking.**

623 (1) (a) A regular full-time employee of an institution of higher education who is  
624 eligible to participate in either this system or in a retirement [~~annuity contract~~] system with the  
625 Teachers' Insurance and Annuity Association of America or with any other public or private  
626 retirement system, organization, or company, designated by the Board of Regents, shall, not  
627 later than January 1, 1979, elect to participate exclusively in this system or in an annuity  
628 contract allowed under this Subsection (1)(a).

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

630 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired  
631 by an institution of higher education after January 1, 1979, may participate only in the  
632 retirement plan which attaches to the person's employment classification.

633 (b) Each institution of higher education shall prepare or amend existing employment  
634 classifications, under the direction of the Board of Regents, so that each classification is  
635 assigned with either:

636 (i) this system;

637 (ii) the Teachers' Insurance and Annuity Association of America; or

638 (iii) another public or private system, organization, or company designated by the  
639 Board of Regents.

640 (c) Notwithstanding a person's employment classification assignment under Subsection  
641 (2)(b), a regular full-time employee who begins employment with an institution of higher  
642 education on or after May 11, 2010, has a one-time irrevocable election to continue  
643 participation in this system, if the employee has service credit in this system before the date of  
644 employment.

645 (3) Notwithstanding an employment classification assignment change made under  
646 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after  
647 January 1, 1979, whose employment classification requires participation in this system may

648 elect to continue participation in this system.

649 (4) A regular full-time employee hired by an institution of higher education after  
650 January 1, 1979, whose employment classification requires participation in this system shall  
651 participate in this system.

652 (5) (a) Notwithstanding any other provision of this section, a regular full-time  
653 employee of an institution of higher education whose employment classification assignment  
654 under Subsection (2)(b) required participation in a retirement program other than this system  
655 shall have a one-time irrevocable election to participate in this system.

656 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.

657 (c) All forms required by the office must be completed and received by the office no  
658 later than June 30, 2010, for the election to participate in this system to be effective.

659 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher  
660 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue  
661 service credit in this system.

662 (6) A regular full-time employee of an institution of higher education who elects to be  
663 covered by this system under Subsection (2)(c) or (5)(a) may purchase periods of employment  
664 while covered under another retirement program by complying with the requirements of  
665 Section 49-11-403.

666 (7) The board shall make rules to implement this section.

667 Section 10. Section **49-21-402** is amended to read:

668 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**  
669 **Application for other benefits required.**

670 (1) A monthly disability benefit may be terminated unless:

671 (a) the eligible employee is under the ongoing care and treatment of a physician other  
672 than the eligible employee; and

673 (b) the eligible employee provides the information and documentation requested by the  
674 office.

675 (2) The monthly disability benefit shall be reduced or reimbursed by any amount  
676 received by, or payable to, the eligible employee from the following sources for the same  
677 period of time during which the eligible employee is entitled to receive a monthly disability  
678 benefit:

679 (a) Social Security disability benefits, including all benefits received by the eligible  
680 employee, the eligible employee's spouse, and the eligible employee's children as determined  
681 by the Social Security Administration;

682 (b) workers' compensation indemnity benefits;

683 (c) any money received by judgment, legal action, or settlement from a third party  
684 liable to the employee for the disability;

685 (d) unemployment compensation benefits;

686 (e) automobile no-fault, medical payments, or similar insurance payments;

687 (f) any money received by a judgment, settlement, or other payment as a result of a  
688 claim against an employer; and

689 (g) any payments made for sick leave, annual leave, or similar payments.

690 (3) The monthly disability benefit shall be reduced by any amount in excess of  
691 one-third of the eligible employee's regular monthly salary received by, or payable to, the  
692 eligible employee from the following sources for the same period of time during which the  
693 eligible employee is entitled to receive a monthly disability benefit:

694 (a) any [~~employer-sponsored retirement programs~~] retirement payment earned through  
695 or provided by public or private employment; and

696 (b) any disability benefit resulting from the disability for which benefits are being  
697 received under this chapter.

698 (4) After the date of disability, cost-of-living increases to any of the benefits listed in  
699 Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability  
700 benefit.

701 (5) Any amounts payable to the eligible employee from one or more of the sources  
702 under Subsection (2) are considered as amounts received whether or not the amounts were  
703 actually received by the eligible employee.

704 (6) (a) An eligible employee shall first apply for all disability benefits from  
705 governmental entities under Subsection (2) to which the eligible employee is or may be  
706 entitled, and provide to the office evidence of the applications.

707 (b) If the eligible employee fails to make application under this Subsection (6), the  
708 monthly disability benefit shall be suspended.

709 Section 11. Section **49-21-403** is amended to read:

710 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

711 (1) An eligible employee covered by this chapter and eligible for service credit under a  
712 system or plan, including an eligible employee who relinquishes rights to retirement benefits  
713 under Section 49-11-619, who applies and is qualified for a monthly disability benefit shall  
714 receive a monthly disability benefit until the earlier of:

- 715 (a) the date of the eligible employee's death;
- 716 (b) the date the eligible employee no longer has a disability;
- 717 (c) the date the eligible employee has accumulated or would have accumulated, if the  
718 employee had not chosen the Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan,  
719 Title 49, Chapter 23, Part 4, Tier II Defined Contribution Plan, been a volunteer firefighter, or  
720 exempted from a retirement system or plan:

- 721 (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public  
722 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement  
723 Act;

- 724 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'  
725 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;

- 726 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public  
727 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory  
728 Retirement Act;

- 729 (iv) 35 years of service credit if the eligible employee is covered by the defined benefit  
730 portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the  
731 defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or

- 732 (v) 25 years of service credit if the eligible employee is covered by the defined benefit  
733 portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the  
734 defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan; or

- 735 (d) the date the eligible employee has received a monthly disability benefit for the  
736 following applicable time periods:

- 737 (i) if the eligible employee is under age 60, the monthly disability benefit is payable  
738 until age 65;

- 739 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the  
740 monthly disability benefit is payable for five years;



741 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the  
742 monthly disability benefit is payable for four years;

743 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the  
744 monthly disability benefit is payable for three years;

745 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the  
746 monthly disability benefit is payable for two years; and

747 (vi) if the eligible employee is 69 years of age or older on the date of disability, the  
748 monthly disability benefit is payable for one year.

749 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible  
750 for service credit under a system may retire under the requirements of the system which  
751 covered the eligible employee on the date of disability.

752 (b) The final average salary used in the calculation of the allowance shall be based on  
753 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase  
754 factor applied to retirees of the system which covered the eligible employee on the date of  
755 disability.

756 (3) An eligible employee who is eligible for service credit in a system, but has  
757 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the  
758 eligible employee would have received by being eligible for service credit in the system  
759 covering the eligible employee on the date of disability, except for the accrual of service credit,  
760 in accordance with this title.

761 (4) An eligible employee receiving a monthly disability benefit who has service credit  
762 from two or more systems may not combine service credits under Section 49-11-405 in  
763 qualifying for retirement, unless the eligible employee would receive a greater allowance by  
764 combining the service credits.

765 (5) An eligible employee covered by this chapter who is a participant in the Tier II  
766 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan, or  
767 Chapter 23, Part 4, Tier II Defined Contribution Plan, who applies and is qualified for a  
768 monthly disability benefit, shall receive a monthly disability benefit until the earlier of:

769 (a) the date of the eligible employee's death;

770 (b) the date the eligible employee no longer has a disability;

771 (c) (i) 35 years from the date the eligible employee began participation in the Tier II

772 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan; or

773 (ii) 25 years from the date the eligible employee began participation in the Tier II  
774 Defined Contribution Plan created in Chapter 23, Part 4, Tier II Defined Contribution Plan; or

775 (d) the date the eligible employee has received a monthly disability benefit for the  
776 following applicable time periods:

777 (i) if the eligible employee is under age 60, the monthly disability benefit is payable  
778 until age 65;

779 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the  
780 monthly disability benefit is payable for five years;

781 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the  
782 monthly disability benefit is payable for four years;

783 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the  
784 monthly disability benefit is payable for three years;

785 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the  
786 monthly disability benefit is payable for two years; and

787 (vi) if the eligible employee is 69 years of age or older on the date of disability, the  
788 monthly disability benefit is payable for one year.

789 Section 12. Section **49-22-203** is amended to read:

790 **49-22-203. Exclusions from membership in system.**

791 The following employees are not eligible for service credit in this system:

792 (1) An employee whose employment status is temporary in nature due to the nature or  
793 the type of work to be performed, provided that:

794 (a) if the term of employment exceeds six months and the employee otherwise qualifies  
795 for service credit in this system, the participating employer shall report and certify to the office  
796 that the employee is a regular full-time employee effective the beginning of the seventh month  
797 of employment; and

798 (b) if an employee, previously terminated prior to becoming eligible for service credit  
799 in this system, is reemployed within three months of termination by the same participating  
800 employer, the participating employer shall report and certify to the office that the member is a  
801 regular full-time employee when the total of the periods of employment equals six months and  
802 the employee otherwise qualifies for service credit in this system.

803 (2) (a) [~~A current or future~~] An employee of an institution of higher education who  
804 [~~holds, or is entitled to hold, under Section 49-22-204, a retirement annuity contract~~]  
805 participates in a retirement system with the Teachers' Insurance and Annuity Association of  
806 America or with any other public or private retirement system, organization, or company  
807 during any period in which required contributions based on compensation have been paid on  
808 behalf of the employee by the employer.

809 (b) The employee, upon cessation of the participating employer contributions, shall  
810 immediately become [~~eligible~~] ineligible for service credit in this system.

811 (3) An employee serving as an exchange employee from outside the state.

812 (4) An employee of the Department of Workforce Services who is covered under  
813 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

814 Section 13. Section **49-22-401** is amended to read:

815 **49-22-401. Contributions -- Rates.**

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

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

822 (i) is sponsored by the board; and

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

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

825 (i) the qualified 401(k) plan which receives the employer contribution described in this  
826 Subsection (2); or

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

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

832 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the  
833 participating employer under Subsection (2)(a) vests to the member upon accruing four years

834 employment as a regular full-time employee under this title.

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

837 (c) Upon filing a written request for exemption with the office, the following  
838 employees are exempt from the vesting requirements of Subsection (3)(a):

839 (i) an executive department head of the state;

840 (ii) a member of the State Tax Commission;

841 (iii) a member of the Public Service Commission;

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

843 (v) an employee of the Governor's Office of Economic Development;

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

845 (vii) an employee of the Governor's Office;

846 (viii) an employee of the State Auditor's Office;

847 (ix) an employee of the State Treasurer's Office;

848 (x) a person appointed as a city manager or appointed as a city administrator or another  
849 at-will employee of a municipality, county, or other political subdivision;

850 (xi) an employee of an interlocal cooperative agency created under Title 11, Chapter  
851 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided  
852 through membership in a labor organization that provides retirement benefits to its members;  
853 and

854 (xii) an employee of the Utah Science Technology and Research Initiative created  
855 under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

856 (d) (i) A participating employer shall prepare a list designating those positions eligible  
857 for exemption under Subsection (3)(c).

858 (ii) An employee may not be exempted unless the employee is employed in a position  
859 designated by the participating employer under Subsection (3)(c).

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

863 (A) elects to be exempt in accordance with Subsection (3)(c); and

864 (B) continues employment with the participating employer through the one-year

865 election period under Subsection 49-22-201(2)(c).

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

868 (A) elects to be exempt in accordance with Subsection (3)(c); and

869 (B) terminates employment prior to the one-year election period under Subsection  
870 49-22-201(2)(c).

871 [~~e~~] (f) (i) In accordance with this section, a municipality, county, or political  
872 subdivision may not exempt more than 50 positions or a number equal to 10% of the  
873 employees of the municipality, county, or political subdivision, whichever is less.

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

876 [~~f~~] (g) Each participating employer shall:

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

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

879 [~~g~~] (h) (i) The office shall make rules to implement this Subsection (3).

880 (ii) The rules made under Subsection [~~(3)(g)(i)~~] (3)(h)(i) shall include provisions to  
881 allow the exemption provided under Subsection (3)(c) to apply to all contributions made  
882 beginning on or after July 1, 2011, on behalf of an exempted employee who began the  
883 employment before May 8, 2012.

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

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

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

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

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

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

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

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

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

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

913 (8) The office may request from any other qualified 401(k) plan under Subsection (2)  
914 any relevant information pertaining to the maintenance of its tax qualification under the  
915 Internal Revenue Code.

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

918 Section 14. Section **49-23-401** is amended to read:

919 **49-23-401. Contributions -- Rates.**

920 (1) Up to the amount allowed by federal law, the participating employer shall make a  
921 nonelective contribution of 12% of the participant's compensation to a defined contribution  
922 plan.

923 (2) (a) The participating employer shall contribute the 12% nonelective contribution  
924 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the  
925 Internal Revenue Code which:

926 (i) is sponsored by the board; and

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

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

929 (i) the qualified 401(k) plan which receives the employer contribution described in this  
930 Subsection (2); or

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

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

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

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

941 (c) Upon filing a written request for exemption with the office, the following  
942 employees are exempt from the vesting requirements of Subsection (3)(a) if the employee is a  
943 public safety service employee and is:

944 (i) an executive department head of the state;

945 (ii) an elected or appointed sheriff of a county; or

946 (iii) an elected or appointed chief of police of a municipality.

947 (d) (i) A participating employer shall prepare a list designating those positions eligible  
948 for exemption under Subsection (3)(c).

949 (ii) An employee may not be exempted unless the employee is employed in a position  
950 designated by the participating employer under Subsection (3)(c).

951 (e) (i) All employer contributions made on behalf of an employee shall be invested in  
952 accordance with Subsection 49-23-302(3)(a) until the one-year election period under  
953 Subsection 49-23-201(2)(c) is expired if the employee:

954 (A) elects to be exempt in accordance with Subsection (3)(c); and

955 (B) continues employment with the participating employer through the one-year  
956 election period under Subsection 49-23-201(2)(c).

957 (ii) An employee is entitled to receive a distribution of the employer contributions

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

959 (A) elects to be exempt in accordance with Subsection (3)(c); and

960 (B) terminates employment prior to the one-year election period under Subsection

961 49-23-201(2)(c).

962 [~~e~~] (f) Each participating employer shall:

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

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

965 [~~f~~] (g) (i) The office shall make rules to implement this Subsection (3).

966 (ii) The rules made under Subsection [~~(3)(f)(i)~~] (3)(g)(i) shall include provisions to  
967 allow the exemption provided under Subsection (3)(c) to apply to all contributions made  
968 beginning on or after July 1, 2011, on behalf of an exempted employee who began the  
969 employment before May 8, 2012.

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

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

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

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

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

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

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



989 employment:

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

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

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

999 (8) The office may request from any other qualified 401(k) plan under Subsection (2)  
1000 any relevant information pertaining to the maintenance of its tax qualification under the  
1001 Internal Revenue Code.

1002 (9) The office may take any action which in its judgment is necessary to maintain the  
1003 tax-qualified status of its 401(k) defined contribution plan under federal law.

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**Legislative Review Note**  
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**Office of Legislative Research and General Counsel**