

2016

**Neal K. Ostler, Petitioner, vs. Utah State Retirement Board,
Respondent.**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

NEAL K. OSTLER,

Petitioner,

vs.

UTAH STATE RETIREMENT BOARD,

Respondent.

NO. 20160220-CA

BRIEF OF RESPONDENT AND REAL PARTY IN INTEREST
SALT LAKE COMMUNITY COLLEGE

On Petition for Review from the Utah State Retirement Board
Agency Case No. 13-25R

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STATEMENT OF APPELLATE JURISDICTION

This is a petition for review of a final order of the Utah State Retirement Board dated February 18, 2016. This Court has jurisdiction over appeals from formal adjudicative proceedings by the Board pursuant to Utah Code sections 49-11-613(7), 63G-4-403(1), and 78A-4-103(2)(a)(i)(A) (2016).

STATEMENT OF ISSUES AND STANDARDS OF REVIEW

Issue No. 2:¹

Whether the Board correctly held Petitioner Neal K. Ostler's claim for retirement contributions from Salt Lake Community College ("SLCC") is barred by the statute of limitations and laches when Ostler waited to file his claim for more than a decade after he learned that SLCC had not made and would not make such contributions.

The applicability of a statute of limitations is a question of law reviewed for correctness. *Russell Packard Dev., Inc. v. Carson*, 2005 UT 14, ¶ 18, 108 P.3d 741 (citing *Spears v. Warr*, 2002 UT 24, ¶ 32, 44 P.3d 772).

The issue of laches presents a mixed question of law and fact. The trial court's legal conclusions are reviewed for correctness and its factual findings are reviewed for clear error. *Johnson v. Johnson*, 2014 UT 21, ¶ 8, 330 P.3d 704. "[T]he determination of whether a party was prejudiced for the purposes of the doctrine of laches is a legal conclusion." *Anderson v. Domms*, 1999 UT App 207, ¶ 8 n.11, 984 P.2d 392. The court

¹ Ostler also presents an additional issue for appeal regarding whether he forfeited service credits when he took a refund of his own contributions. (Pet. Br. at 1.) That issue does not involve SLCC and it is not addressed in this brief. However, for the sake of consistency between the briefs, the statute of limitations and laches issue is referred to here as "Issue 2."

grants deference to the lower court's application of the law to the facts as long as the determination is supported by adequate factual findings. *Veysey v. Veysey*, 2014 UT App 264, ¶ 6, 339 P.3d 131.

DETERMINATIVE STATUTES

1. Utah Code § 78B-2-305(4) (2016)

An action may be brought within three years:

...

(4) for a liability created by the statutes of this state, other than for a penalty or forfeiture under the laws of this state, except where in special cases a different limitation is prescribed by the statutes of this state;

2. The Utah Retirement Act

The following provisions from the Utah Retirement Act are important to the issue on appeal:

Utah Code § 49-11-102 (2016)
Utah Code § 49-11-401 (2016)
Utah Code § 49-11-601 (2016)
Utah Code § 49-11-613 (2016)
Utah Code § 49-13-301 (2016)
Utah Code § 49-13-401 (2016)
Utah Code § 49-13-402 (2016)
Utah Code § 49-1-103 (1998)
Utah Code § 49-1-601 (1998)
Utah Code § 49-1-602 (1998)
Utah Code § 49-1-610(1998)
Utah Code § 49-3-301 (1998)
Utah Code § 49-3-401 (1998)
Utah Code § 49-3-402 (1998)

Title 49 Chapter 11 of the 2016 Act is included in Ostler's Brief as Addendum B. The relevant excerpts from Title 49 Chapter 13 of the Retirement Act are included with this brief as Addendum 1. Relevant excerpts from the 1998 version of the Retirement Act are included with this brief as Addendum 2.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

The Utah State Retirement Board (the "Board") dismissed Petitioner Neal K. Ostler's request for retirement contributions from SLCC because his claim is barred by the statute of limitations and laches. (R. at 740, 747.) He petitions this Court to review that decision.

II. COURSE OF PROCEEDINGS AND DISPOSITION OF AGENCY ACTION

Neal K. Ostler ("Ostler") filed a Request for Board Action seeking retirement benefits from the Utah State Retirement Office ("URS") and asking the Board to order SLCC to make contributions for him so he would have enough service credits to retire. (R. at 1.)² Ostler also filed a motion to join SLCC as a party. (R. at 123.) The Board initially denied Ostler's motion because he had already litigated those issues in a prior case he filed against SLCC in the Third District Court. (R. at 274, 365-367.) However, Ostler filed a Motion to Reconsider arguing the Third District Court lacked subject matter jurisdiction, and as a result, SLCC was a necessary party. (R. at 378-381.) The Board granted Ostler's motion and joined SLCC. (R. at 398-401.)

² The first page of the record was numbered "000000" instead of "000001."

SLCC then filed a Motion for Summary Judgment asserting Ostler's claims were barred by the statute of limitations and doctrine of laches. (R. at 404-414.) The Board granted SLCC's motion. (R. at 738-741.) Ostler and the Board then filed cross motions for summary judgment on Ostler's claims that are unrelated to SLCC. (R. at 599, 646.) The Hearing Officer granted the Board's Motion. (R. 724-731.)

On February 18, 2016, the Board issued its Final Order incorporating the Order Granting SLCC's Motion for Summary Judgment and dismissing all of Ostler's claims. (R. at 733-736.)

STATEMENT OF FACTS

At all relevant times, SLCC has participated in the Public Employees' Noncontributory Retirement Plan (the "Noncontributory Plan") administrated by URS. (R. at 726.) SLCC makes contributions to that plan on behalf of its eligible employees. (R. at 726.) The employees, in turn, earn service credits with URS. (R. at 523.) URS uses those service credits to determine an employee's eligibility for pension benefits and the amount that benefit. (R. at 73-74.); *see also* Utah Code § 49-13-401 (2016). To receive a pension benefit, an employee must have at least four service credits. (R. at 73-74.); *see also* Utah Code § 49-13-401 (2016).

SLCC employed Ostler from 1992 to 1998 as an adjunct employee. (R. at 168, 510.) Because Ostler's adjunct position was both temporary and part-time, SLCC did not

consider him to be eligible for retirement benefits. (R. at 168-172, 408.)³ SLCC therefore did not enroll Ostler in the Noncontributory Plan or make retirement contributions to URS on his behalf. (R. at 408, 738.)

Ostler knew that SLCC did not enroll him in a retirement plan or make any contributions for him. At the earliest, he had this information during his employment. (R. at 408-409.) At the latest, he knew in 2001. That year, he filed a Second Amended Complaint against SLCC in Third District Court (the “Third District Complaint”) specifically alleging he had been harmed because SLCC wrongfully failed to enroll him in a retirement plan or provide him with retirement benefits. (R. at 449, 454.) He alleged he was eligible for such benefits, in part, because he had been working hours outside of his contract that he had not reported to SLCC. (R. at 423-429.) Ostler’s Third District Complaint is evidence that he knew his claim for contributions had already accrued by 2001 and was ripe for resolution.

SLCC disputed Ostler’s allegations and moved for summary judgment, expressly denying that it owed Ostler retirement benefits. (R. at 164, 192-199.) SLCC argued that (1) Ostler was not a full-time employee and therefore was not eligible for benefits; (2) even if Ostler had been eligible, he had not fulfilled his obligation under SLCC’s policies to enroll in benefits; (3) Ostler was a temporary adjunct employee and temporary employees were not eligible for retirement benefits; and (4) Ostler voided any eligibility for retirement benefits based on working excess hours because he did not report them. (R.

³ Because Ostler’s claim was dismissed on timeliness grounds, the Board did not determine whether he was actually eligible for benefits. That issue is disputed, but is not before this Court.

at 192-198.) The Third District Court granted SLCC's Motion for Summary Judgment, and dismissed Ostler's claims on July 17, 2003. (R. at 457-470.) At that point, SLCC believed all disputes between it and Ostler were resolved.

Although Ostler did not earn any service credits from his employment with SLCC, he had earned service credits with URS from other qualifying employment. Ostler earned 15.169 service credits in the Public Safety Employees' Contributory Plan (the "Public Safety Plan") from his employment with the Department of Corrections and the Salt Lake County Sheriff's Department. (R. at 28.) He also earned 3.352 service credits in the Noncontributory Plan through qualifying employment with Salt Lake City, the Utah Department of Commerce, and the Davis Applied Technology Center. (R. at 28.) Together, this amounted to 18.521 service credits, well above the minimum of four service credits an employee needs to be eligible for a pension benefit under the Retirement Act. (R. at 28, 73.) However, Ostler forfeited 15.169 service credits by taking a refund of nearly \$27,000 from his own contributions into the Public Safety Plan, under which credits are based on employer and employee contributions. (R. 73-74.)

Ostler applied for retirement in 2013. (R. at 73.) URS denied his application because Ostler had fewer than four service credits as a result of his \$27,000 refund. URS told Ostler he was therefore ineligible to receive a pension benefit. (R. at 73-74.) However, URS gave Ostler a solution: he could reinstate his Public Safety Plan service credits by redepositing the amount of his refund plus interest. (R. at 73-74.)

Ostler did not redeposit the amount of the refund. (R. at 727.) Instead, he filed a Request for Board Action demanding the same contributions from SLCC that were at issue in the Third District Complaint he filed twelve years earlier. (R. at 1.)

The Board joined SLCC as a party and SLCC moved for summary judgment asserting Ostler's claim for contributions was barred by the statute of limitations and laches because it accrued years earlier when he learned SLCC had not made the contributions. (R. at 407-413.) Ostler, on the other hand, asserted his claim did not accrue until URS denied his retirement application. (R. at 485, 491-493.)

The Board granted SLCC's motion and held that a claim for retirement contributions accrues when the contributions are not made *and* when the employee reasonably learns of that failure. (R. at 739.) The Board recognized holding a claim accrues at retirement would "result in substantial problems in subsequent litigation and would defeat the purpose of the statute of limitations" because it "would allow a claimant to sit on a claim for literally decades while penalties and interest continue to accrue, documents are lost, memories fade, [or] personnel change, disappear or pass away." (R. at 739-740.) The Board also noted Ostler's position would "create a substantial injustice to an employee" trying to make career and retirement decisions because he or she would have to wait until retirement to assert a claim and determine whether he or she could rely on certain benefits. (R. at 740.)

Applying this holding, the Board found that Ostler's claim for retirement contributions accrued "at least as early as January 2001" when he filed the Third District Complaint. (R. at 740.) Thus, it was barred by the three-year statute of limitations in

Utah Code section 78B-2-305(4). (R. at 739.) The Board further held that to the extent Ostler's claims were equitable, they were barred by the doctrine of laches because he "sat on his claims for almost 10 years" and the delay "could cause unnecessary injury to SLCC." (R. at 740.)

SUMMARY OF ARGUMENT

Ostler knew SLCC did not enroll him in a retirement plan or make any contributions on his behalf for at least twelve years before he asked the Board for relief. As a result, the Board held his claim for contributions was barred by both the statute of limitations and laches. That decision was correct and should be affirmed.

First, the Board correctly held Ostler's claim was barred by the three-year statute of limitations in Utah Code section 78B-2-305(4) because it accrued when SLCC did not make retirement contributions *and* when Ostler learned those contributions had not been made. Under Utah law, a cause of action accrues, and the statute of limitations begins running, when a claimant suffers an injury that can be remedied by the courts, or in this case the Board. *State v. Huntington-Cleveland Irrigation Co.*, 2002 UT 75, ¶ 24, 52 P.3d 1257. Ostler suffered such an injury in 2001, at the latest, when he filed a lawsuit for retirement contributions in the Third District Court. That lawsuit shows not only that Ostler knew he had been damaged, but also that he recognized his claim was ripe for resolution. He could have filed his claim with the Board at that time. If he had, the Board could have determined his eligibility and remedied any wrong by collecting contributions from SLCC and awarding him the very service credits he now asserts he needs. Utah Code §§ 49-11-601, -613 (2016). Adopting Ostler's position that a claim

accrues at retirement would allow a claimant to sit on a known claim for decades until he or she makes the unilateral decision to retire, which would completely undermine the purposes of statutes of limitations. For this reason, other jurisdictions have similarly held that a claim accrues at when the claimant knows contributions were missed. Ostler's legal error in seeking relief from the wrong forum does not change this result.

Second, to the extent Ostler's claim is equitable, it is barred by the doctrine of laches. A claim is barred by laches when a claimant's lack of diligence causes a disadvantage to another. *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg*, 2010 UT 51, ¶ 27, 238 P.3d 1054. That is precisely the case here. Although Ostler knew he was not eligible for retirement benefits in 2001, he sat on his claims for twelve years until he realized he was not eligible for retirement because of the \$27,000 refund he had received from URS and, presumably, could not repay. Ostler's lack of diligence has harmed SLCC by forcing it to re-litigate a stale claim and exposing it to years of penalties that could have been avoided. The Board correctly held Ostler's claim was barred by laches.

ARGUMENT

Ostler knew in at least 2001 that SLCC did not—and would not—enroll him in a retirement plan or make any retirement contributions on his behalf. Nevertheless, he did not request any relief from the Board until 2013. His claim for contributions from SLCC cannot survive this twelve-year delay. This Court should affirm the Board's holding that Ostler's claim is barred by both the statute of limitations and the doctrine of laches.

I. OSTLER’S CLAIM FOR CONTRIBUTIONS IS BARRED BY THE THREE-YEAR STATUTE OF LIMITATIONS

The parties do not dispute that the three-year statute of limitations under Utah Code section 78B-2-305(4) governs Ostler’s claim. Rather, the issue is whether Ostler’s claim accrued when he chose to retire or twelve years earlier when he knew that SLCC had not enrolled him in a retirement plan or made contributions for him. The Board correctly adopted the latter approach and held that a claim for retirement contributions begins to run “when the employer fails to make contributions required under the statute and when the employee reasonably learns” of that failure. (R. at 739.) This Court should affirm that holding because it is consistent with Utah law and well-reasoned cases from other jurisdictions. Ostler’s Third District Complaint does not make these rules any less applicable.

1. Ostler’s Claim Accrued and Was Remediable When He Learned SLCC Had Not Made Retirement Contributions

The Board correctly held that Ostler’s claim accrued when he learned SLCC had not made retirement contributions. A statute of limitations begins to run when a cause of action accrues. *Butcher v. Gilroy*, 744 P.2d 311, 313 (Utah Ct. App. 1987). A cause of action accrues when it becomes “remediable in the courts,” that is when it is “in such condition that the courts can proceed and give judgement if the claim is established.” *State v. Huntington-Cleveland Irrigation Co.*, 2002 UT 75, ¶ 24, 52 P.3d 1257 (internal quotations omitted). A court—or in this case the Board—can enter judgment when all of the elements that must be proved at trial under the statute exist. *Id.* ¶ 24; *Flowell Elec. Ass’n, Inc. v. Rhodes Pump, LLC*, 2015 UT 87, ¶ 12, 361 P.3d 91.

Utah courts have not addressed when a claim for retirement contributions accrues. However, all of the elements that must be proved under the Retirement Act exist when an employee learns an employer missed a contribution. During all times relevant to this dispute, the relevant portions of that Act have required participating employers to make contributions to the Noncontributory Fund on behalf of their eligible employees. Utah Code § 49-13-301 (2016); *see also* Utah Code §§ 49-1-103, -601 (1998).⁴ URS sets the amount of and due date for these contributions. *See, e.g., id.* § 49-13-301(1) (2016); *id.* § 49-1-601(3) (1998). An employer that does not timely remit them is liable for penalties and interest. *Id.* § 49-11-601 (2016); *id.* §§ 49-1-601(3), -602 (1998). And, importantly, if an employer does not make its contributions, the employee does not receive service credits, and that period of employment will not be used towards determining the employee's eligibility for or the amount of retirement benefits. *Id.* §§ 49-11-102(49), -401(3) (2016); *Id.* § 49-13-402 (2016); *id.* §§ 49-3-301, -401, -402 (1998).

The Board can remedy unpaid contributions, and grant the corresponding service credits, by ordering the employer to make them. *See id.* § 49-11-613 (2016) (stating procedures to bring a dispute to Board); *id.* § 49-1-610 (1998) (same); *see also id.* § 49-

⁴ SLCC cites provisions from the 1998 Act since that was in effect when Ostler's employment with SLCC ended. The Utah Legislature re-codified the Utah Retirement Act in 2002. The re-codification clarified and updated the language of the Act, but it did make any changes to policies, benefits, or contributions. *See* H.B. 250, Gen. Sess. 2002, House Day 4 (1/24/2002) Part 1, at 51:40-52:44 (statement of Rep. Ron Bigelow); H.B. 250, Gen. Sess. 2002, House Day 11 (1/31/2002) Part 1 at 43:50-46:53 (statement of Rep. Ron Bigelow); H.B. 250, Gen. Sess. 2002, Senate Day 37 (2/26/2002) Part 1, at 5:12-5:13 (statement of Sen. Beverly Ann Evans); Gen. Sess. 2002, Senate Day 38 (2/27/2002) Part 1, at 34:00-35:01 (statement of Sen. Beverly Ann Evans), *all available at* <http://le.utah.gov/~2002/bills/static/HB0250.html> (last visited 9/5/2016).

11-601 (2016) (employer contributions “shall be paid to the office . . . as determined by the executive director”); *id.* § 49-1-601(4) (1998) (stating employer shall make necessary adjustment to contributions as required by the Board). This can be done as soon as an employer misses a contribution. *See Fishbein v. State ex rel. La. State Univ. Health Sci. Ctr.*, 898 So.2d 1260, 1269 (La. 2005) (holding where statute required employer to make contributions into retirement system, employee’s claim accrued at each missed contribution). Accordingly, the Board has permitted claimants to bring claims for benefits prior to retirement and has, in turn, initiated proceedings to recover those contributions from the employer. *See Ramsay v. Kane Cty. Human Res. Special Serv. Dist.*, 2014 UT 5, ¶¶ 1-2, 322 P.3d 1163.

In this case, the Board could have provided a remedy if Ostler filed his claim when he realized SLCC had not made retirement contributions. All of the facts necessary for the Board to determine Ostler’s eligibility for contributions existed, at the latest, in 2001. The amount of the any owed contributions was also determinable. If the Board found Ostler were eligible, it could have ordered SLCC to make those contributions and awarded Ostler the service credits he now wants. Significantly, Ostler recognized that he had suffered an injury and that it was ripe for resolution in 2001 because he did seek relief, albeit in the wrong forum, by filing the Third District Court Complaint. His claim was remediable, and therefore accrued, at that time.

2. Ostler Does Not Need Actual Monetary Damages Before His Claim Accrues

Notwithstanding the Retirement Act and his prior request for judicial relief, Ostler asserts his claim did not accrue before retirement because he did not yet have “actual damages.” (Pet. Br. at 17.) Ostler’s argument oversimplifies Utah law. In some cases, damages are the last event necessary to trigger accrual because before that the claim is speculative and not fully formed. *See Huntington*, 2002 UT 75, ¶ 24 (holding claim that shares were improperly reclassified did not accrue until reclassification actually resulted in higher costs); *see also Seale v. Gowans*, 923 P.2d 1361, 1364 (Utah 1996) (cited in *Huntington*) (holding malpractice claim did not accrue when plaintiff learned of misdiagnosis because claim was only speculative until plaintiff suffered actual harm as a result). However, damages are not required to complete a claim in all cases.⁵ A contract claim is remediable when a litigant learns the defendant will not perform, and the litigant does not have the luxury to incur actual damages before the limitations period starts to run. *Clarke v. Living Scriptures, Inc.*, 2005 UT App 225, ¶¶ 12-15, 114 P.3d 602

⁵ Ostler cites *Huntington*, 2002 UT 75, ¶ 24 in support of his assertion. But that case does not state “actual damages” are a necessary prerequisite to accrual. Instead, it states, “[U]nless a statute otherwise provides, *generally* the plaintiff must have suffered damages before a cause of action accrues for statute of limitations purposes. 2002 UT 75, ¶ 24 (emphasis added). The use of the term “generally” expressly recognizes that there are exceptions. *Id.* *Huntington* acknowledges one such exception by citing *Spears v. Warr* as holding a claim accrues at “the point at which a person reasonably should know that he or she *has suffered a legal injury*.” *Id.* (quoting *Spears v. Warr*, 2002 UT 24, ¶ 32, 44 P.3d 742. The better pronouncement of the rule is the one stated earlier in *Huntington* and cited above, “the statute of limitations is not triggered until all of the elements that must be proved at trial under the statute allegedly creating liability on the part of the defendant are existing and may be established.” 2002 UT 75, ¶ 24; *see supra* at 10.

(holding cause of action for breach of employment agreement accrued when defendant notified plaintiff of termination, not when plaintiff's employment actually ended several months later); *Spears v. Warr*, 44 P.3d 742, 754 (Utah 2002) (holding breach of contract claim accrued when plaintiffs were on notice that defendants were not going to perform contractual obligation to provide irrigation water) overruled on other grounds by *Tangren Family Trust v. Tangren*, 2008 UT 20, ¶ 16 n.20, 182 P.3d 326. For example, in *S&G Inc. v. Intermountain Power Agency*, the defendant breached its contract with the plaintiff by refusing to bring a lawsuit against the state engineer. 913 P.2d 735, 737 (Utah 1996). Rather than suing the defendant, the plaintiff filed its own claim against the state engineer, but it was dismissed for lack of standing. *Id.* The plaintiff then sued the defendant, arguing its claim did not fully mature until it lost its case against the state engineer because it could not ascertain its damages prior that point. *Id.* at 738, 740 n.6. The court rejected that argument because, although the damages were not measurable, the plaintiff should have known that an unfavorable ruling in its case with the state engineer would cause the very damages at issue. *Id.*

Importantly, courts have also recognized that actual monetary damages are not necessary to trigger the accrual of statutory claims. *State Insurance Fund. v. Industrial Commission* is particularly instructive. 209 P.2d 558 (Utah 1949). The statute at issue in that case required an employee to demand compensation for an occupational disability within sixty days. *Id.* at 559. The court considered whether the claim accrued when the plaintiff discovered he had a disability or when the employer refused to pay compensation, but determined neither approach was satisfactory. *Id.* at 560. A holding

that a claim accrued at diagnosis meant a plaintiff may not be able to determine the disability was caused by employment within the short limitation period. *Id.* at 560. But a holding that a cause of action did not arise until the employer refused to pay meant the employee could postpone accrual indefinitely by never requesting compensation. *Id.* Thus, the court held that the better rule was that a cause of action accrues when the employee suffers a compensable disability and could by reasonable diligence ascertain that disability. *Id.*

Ostler's claim technically arises in statute, but it is contract-like in that he asserts SLCC owed benefits in exchange for the work he did as an employee. As in *S&G* and *State Insurance*, the Board correctly held that Ostler's claim accrued when he learned SLCC has not performed its alleged duty to make contributions. The lack of contributions meant he did not get service credits—an actual injury. He knew, or reasonably should have known, that those missed credits could ultimately render him ineligible for retirement or, at the very least, reduce the amount of his benefit. He does not get to wait until he actually feels the sting from those lost credits to seek relief. Otherwise, as the Board recognized, he could postpone the accrual of the claim indefinitely. This would not be fair to public employers who may be forced to litigate decades-old claims, however illegitimate, from any number of former employees discovering a shortfall at retirement. It would also contradict the very reason Utah has adopted statutes of limitations, including preventing surprise and the difficulties of litigating old claims. *See Davis v. Provo City Corp.*, 2008 UT 59, ¶ 27, 193 P.3d 86 (recognizing purposes of statutes of limitations as preventing surprise, ambush, or stale

claims and preventing the difficulties caused by lost evidence, faded memories, and disappearing witnesses).

3. The Board's Decision Follows the Better-Reasoned Cases from Other Jurisdictions

The Board's holding follows the same approach as other jurisdictions that have held a claim for retirement contributions accrues when the claimant learns he or she has not received them. *See Jiricek v. Woonsocket Sch. Dist.* #55-4, 489 N.W.2d 348, 349-50 (S.D. 1992) (rejecting argument that cause of action did not accrue until retirement because it would allow claimants to postpone claims indefinitely); *Lane v. Non-Teacher Sch. Emp. Ret. Sys. of Mo.*, 174 S.W.3d 626, 638 (Mo. Ct. App. 2005) (statute of limitations begins to run at retirement, "unless the claimant knew or should have known from an event or circumstance that a clear repudiation of those benefits or rights has occurred."); *Bailey v. Shelby Cty.*, 2013 WL 2149734, *10 (Tenn. Ct. App. 2013) (finding statute of limitations began to run when employees were on reasonable notice of claims prior to retirement).

Federal courts have adopted a similar position in ERISA cases. While claims for pension benefits under ERISA generally do not accrue until a benefit is formally denied, there is an exception when an employer repudiates the employee's pension rights. *Lane*, 174 S.W. 3d at 637 (citing *Union Pacific R.R. Co. v. Beckham*, 138 F.3d 325, 330 (8th Cir. 1998)); *Miller v. Fortis Benefits Ins. Co.*, 475 F.3d 516, 522-23 (3d. Cir. 2007). In those cases, the cause of action accrues when the employee learned or reasonably should have learned of the repudiation. *Id.* This rule has been adopted to balance the rights of

both employees and employers. On the one hand, it would be burdensome and unfair to require lay employees to be constantly on alert for potential errors or abuses that might give rise to a claim. *Lane*, 174 S.W.3d at 637. On the other hand, permitting employees who know or should know they have not received contributions to wait years to bring their claim would defeat the purposes of the statute of limitations. *Id.* While ERISA does not apply to the Noncontributory Plan, the reasons underlying the repudiation exception are wholly consistent with the Board's decision. (R. at 739-740.)

Ostler does not acknowledge any of these authorities. Rather, he asserts the Board's decision contradicts other jurisdictions that hold a claim accrues at retirement. (Pet. Br. at 16.) However, only two of the cases he cites involved plaintiffs who waited to file a claim despite their apparent knowledge that they were ineligible or their employer had not made contributions. *See Cal. Teachers's Ass'n v. Governing Bd. of the Yosemite Cmty. Coll. Dist.*, 169 Ca. App.3d 35, 44 (Cal. Ct.. App. 1985) (holding teachers could bring claim five years after employer refused to make retroactive contributions to correct employer's misclassification was timely because claim accrued at retirement); *Wagner v. B.F. Goodrich Co.*, 1991 WL 184489, *1 (Ohio Ct. App. 1991) (holding plaintiff's claim did not accrue until retirement). The remaining authorities are not on point. They do not involve claims against an employer, but rather claims for benefits against the state pension fund that were, in some instances, brought too many years after retirement. *See Wash. Educ. Ass'n v. Wash. Dept. of Ret. Sys.*, 332 P.3d 439, 446 (Wash. 2014) (holding claims against state for repeal of cost of living increases were barred if they retired outside of the three-year limitation period); *Bordwine v. Okla.*

Firefighters Pension and Ret. Sys., 2004 OK CIV APP 75, ¶ 10, 99 P.3d 703 (holding plaintiff could not claim entitlement to pension benefits based on military service when he waited thirteen years after retirement to file suit); Williston on Contracts, § 79:14 (4th ed.) (“Three year statute of limitations for actions alleging a breach of state employee pension contracts begins to run at the time of retirement.” (citing *Wash. Educ. Ass’n*, 332 P.3d 439)).

Regardless *California Teachers* and *Wagner*, Ostler’s case demonstrates precisely why the Board’s rule is the better approach. Ostler has known since 2001 that SLCC did not make contributions on his behalf. And SLCC clearly repudiated any obligation to pay him benefits in its defense of that lawsuit. Yet Ostler waited more than a decade to ask for the Board’s help. Ostler’s assertion that his claim should not accrue until retirement creates an absurd result under which a litigant can be aware of all of the underlying facts but not have a claim until he decides he wants to have one, even if it is decades later.

4. The Third District Complaint Does Not Toll Accrual

Ostler’s final statute of limitations argument is that “the arguments that normally support time barring a claim are not present” in this case because Ostler previously asserted his claims. However, that is not an exception to the accrual rule or the enforcement of a statute of limitations, nor does Ostler explain why it should be. And Ostler does not challenge the Board’s holdings that neither the discovery rule nor the savings statute saves his claim by somehow tolling the limitations period for more than a decade. (R. 740.)

Furthermore, the arguments that support time-barring a claim are particularly strong here. SLCC already defended itself against Ostler’s claim. It had no reason to believe it would have to do it again a decade later—well after even the most generous limitations periods would have run. *See, e.g.,* Utah Code §§ 78B-2-307 (four years); 78B-2-309 (six years) (2016). Ostler made a legal mistake by filing his claim in the wrong forum. That error does not toll the running of the limitations period, and SLCC should not be required to bear the costs of Ostler’s mistake by re-litigating this stale claim. *See Russell Packard Dev., Inc. v. Carson*, 2005 UT 14, ¶ 20, 108 P.3d 741 (“Mere ignorance of the existence of a cause of action will neither prevent the running of the statute of limitations nor excuse a plaintiff’s failure to file a claim within the relevant statutory period.”); *S&G*, 913 P.2d at 741 n.6 (“[F]aulty legal assumptions do not toll the statute of limitations.”).

For these reasons, this Court should reject Ostler’s position and affirm the Board’s holding that Ostler’s claim is time barred because it accrued in 2001, at the latest, when Ostler learned SLCC had not made any retirement contributions for him.

II. OSTLER’S CLAIM IS BARRED BY THE DOCTRINE OF LACHES

The Board correctly held that any equitable claim for contributions is barred by laches. (R. at 740.) The doctrine of laches bars a claim when a claimant’s lack of diligence in bringing the claim causes injury to the defendant. *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg*, 2010 UT 51, ¶ 27, 238 P.3d 1054. Both elements are present here.

1. Ostler Was Not Diligent in Seeking Relief from the Board

Ostler was not diligent in bringing his claim for contributions from SLCC. He suffered an actual and remediable legal injury in 2001 when he realized that SLCC had not made, and would not make, retirement contributions. He nevertheless did not ask the Board for relief until more than a decade passed and he discovered he would not be eligible for retirement unless he redeposited thousands of dollars.

Ostler asserts that this delay is excusable because the Third District Court dismissed his complaint even though it lacked jurisdiction to do so. In support of his argument, Ostler cites *SMP, Inc. v. Kirkman*, 843 P.2d 531, 533-34 (Utah Ct. App. 1992). (Pet. Br. 18). But that case held only that the prior adjudicating tribunal must have had subject matter jurisdiction for res judicata purposes. 843 P.2d at 533. It does not address laches or otherwise support Ostler's position that failed prior litigation excuses a delay in bringing a claim.

Moreover, Ostler's delay is not excused because the Retirement Act has long held that a claimant with a dispute should request relief from the Board Utah Code § 49-11-613 (2016; *id.* § 49-1-610 (1998)). Ostler was represented by counsel at the outset of the Third District case and could have filed his claim in the correct forum. Ostler likewise could have challenged the district court's authority before the Board at any time after the Third District Court dismissed his complaint. While *Ramsay v. Kane Cty. Human Resource Special Serv. Dist.* was not issued until 2014, it did not create new law but rather reiterated that, all along, Utah Code section 49-11-613 has required an employee to

file claims with the Board. 2014 UT 5, ¶ 11, 322 P.3d 1163. Ostler does not get to hit the reset button his claim because the court clarified the meaning of language.

2. Ostler's Delay Harmed SLCC

Ostler's delay has harmed SLCC. Under the Retirement Act, an employer may be liable for penalties and interest on late contributions. If SLCC were held liable for contributions, SLCC may be liable for more than two decades worth of penalties which could have been reduced or avoided. Ostler asserts that SLCC could have avoided these penalties by making these contributions. But that misses the whole point. SLCC had no rational reason to make the contributions because a district court had agreed no contributions were necessary. SLCC relied on the district court's holding and never anticipated that the same former employee deemed ineligible for benefits would bring the same claim for them more than a decade later. Moreover, in order to defend itself from Ostler's claim, SLCC will have to rely on facts from the 1990s. This will be particularly difficult considering that part of Ostler's claim is based on his allegation that he worked hours that were never reported in the first place. (R. at 423-429.) While SLCC may have been able to mount its defense during the Third District Suit, an additional decade has passed. Memories will have faded and witnesses may not be available. This is precisely the type of harm laches is meant to avoid.

The Board correctly held that Ostler delayed his claim to the detriment of SLCC. This Court should affirm the Board's holding that Ostler's claim is barred by laches.

CONCLUSION

Based on the foregoing, this Court should affirm the Board's holding that Ostler's claim accrued when he learned that SLCC would not make retirement contributions and it is therefore barred by the statute of limitations and doctrine of laches.

DATE this 6th day of September 2016.



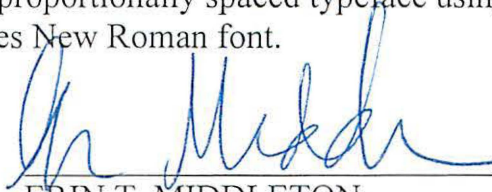
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CERTIFICATE OF COMPLIANCE WITH RULE 24(F)(1)

1. This brief complies with the type-volume limitations of Utah R. App. P. 24(f)(1) because:
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ERIN T. MIDDLETON
Assistant Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September 2016, I caused to be served via electronic mail or first class postage prepaid, the foregoing **BRIEF OF RESPONDENT AND REAL PARTY IN INTEREST SALT LAKE COMMUNITY COLLEGE** to:

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ADDENDUM

- Addendum 1: Excerpts from the Public Employees' Noncontributory Retirement Act, Utah Code Title 49, Chapter 13 (2016)
- Addendum 2: Excerpts from the Utah State Retirement Act, Utah Code Title 49, Chapters 1 and 3 (1998)

ADDENDUM 1

West's Utah Code Annotated

Title 49. Utah State Retirement and Insurance Benefit Act (Refs & Annos)

Chapter 13. Public Employees' Noncontributory Retirement Act

Part 1. General Provisions

U.C.A. 1953 § 49-13-101

§ 49-13-101. Title

Currentness

This chapter is known as the "Public Employees' Noncontributory Retirement Act."

Credits

Laws 1987, c. 1, § 58; Laws 2002, c. 250, § 68, eff. March 26, 2002.

Codifications C. 1953, § 49-3-101.

U.C.A. 1953 § 49-13-101, UT ST § 49-13-101

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West's Utah Code Annotated

Title 49. Utah State Retirement and Insurance Benefit Act (Refs & Annos)

Chapter 13. Public Employees' Noncontributory Retirement Act

Part 3. Contributions

U.C.A. 1953 § 49-13-301

§ 49-13-301. Contributions--Two levels

Currentness

(1) Participating employers shall pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.

(2) For purposes of determining contribution rates, this system is divided into two levels according to participating employers as follows:

(a) Level A includes the state, its independent agencies, independent entities, public corporations, and other instrumentalities, all participating educational institutions, and all other participating employers whose activities are associated with participating educational institutions.

(b) Level B includes all other participating employers in this system.

Credits

Laws 1987, c. 1, § 68; Laws 1989, c. 114, § 2; Laws 1991, c. 226, § 3; Laws 1992, c. 157, § 14; Laws 2002, c. 250, § 77, eff. March 26, 2002.

Codifications C. 1953, § 49-3-301.

U.C.A. 1953 § 49-13-301, UT ST § 49-13-301

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West's Utah Code Annotated

Title 49. Utah State Retirement and Insurance Benefit Act (Refs & Annos)

Chapter 13. Public Employees' Noncontributory Retirement Act

Part 4. Defined Benefit

U.C.A. 1953 § 49-13-401

§ 49-13-401. Eligibility for an allowance--Date of retirement--Qualifications

Currentness

(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;

(iv) the member has accrued at least 30 years of service credit; or

(v) the member has accrued at least 25 years of service credit, in which case the member shall be subject to the reduction under Subsection 49-13-402(2)(b).

(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 is not required to cease 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).

Credits

Laws 1987, c. 1, § 70; Laws 1988, c. 179, § 13; Laws 1993, c. 226, § 8; Laws 1994, c. 317, § 1; Laws 1995, c. 197, § 11, eff. July 1, 1996; Laws 1996, c. 231, §§ 11, 12, eff. July 1, 1996; Laws 1999, c. 292, § 6, eff. March 19, 1999; Laws 2002, c. 250, § 80, eff. March 26, 2002; Laws 2010, c. 321, § 5, eff. May 11, 2010; Laws 2011, c. 439, § 14, eff. May 10, 2011; Laws 2013, c. 215, § 3, eff. May 14, 2013; Laws 2014, c. 15, § 18, eff. March 3, 2014; Laws 2015, c. 256, § 3, eff. May 12, 2015; Laws 2016, c. 310, § 14, eff. May 10, 2016.

Codifications C. 1953, § 49-3-401.

U.C.A. 1953 § 49-13-401, UT ST § 49-13-401
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West's Utah Code Annotated

Title 49. Utah State Retirement and Insurance Benefit Act (Refs & Annos)

Chapter 13. Public Employees' Noncontributory Retirement Act

Part 4. Defined Benefit

U.C.A. 1953 § 49-13-402

§ 49-13-402. Service retirement plans--Calculation of retirement allowance--Social Security limitations

Currentness

(1)(a) Except as provided under Section 49-13-701, 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 allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 30 years of service credit, the allowance is an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for each year of retirement from age 60 to age 65, plus a full actuarial reduction for each year of retirement prior to age 60, unless the member has 30 or more years of accrued credit, in which event no reduction is made to the allowance.

(c)(i) Years of service include 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 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 one-half of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(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 the application is received by the office within 90 days of the spouse's death; or

(ii) application is received by the office, if the application is 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 the application is received by the office within 90 days of the spouse's death; or

(ii) application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(4)(a)(i) The final average salary is limited in the computation of that part of an allowance based on service rendered prior to July 1, 1967, during a period when the retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with a public or private system, organization, or company designated by the State Board of Regents to \$4,800.

(ii) This limitation is not applicable to retirees who elected to continue in the Public Employees' Contributory Retirement System by July 1, 1967.

(b) Periods of employment which are exempt from this system as permitted under Subsection 49-13-203(1)(b) may be purchased by the member for the purpose of retirement only if all benefits from a public or private system, organization, or company designated by the State Board of Regents based on this period of employment are forfeited.

(5)(a) If a retiree under Option One dies within 90 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.

(6) 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.

Credits

Laws 1987, c. 1, § 71; Laws 1987, c. 108, § 2; Laws 1987, c. 243, § 3; Laws 1988, c. 179, § 14; Laws 1989, c. 81, § 15; Laws 1990, c. 253, § 2; Laws 1990, c. 273, § 15; Laws 1996, c. 231, § 13, eff. July 1, 1996; Laws 2002, c. 250, § 81, eff. March 26, 2002; Laws 2005, c. 116, § 15, eff. May 2, 2005; Laws 2007, c. 130, § 6, eff. April 30, 2007; Laws 2011, c. 439, § 15, eff. May 10, 2011; Laws 2014, c. 15, § 19, eff. March 3, 2014.

Codifications C. 1953, § 49-3-402.

U.C.A. 1953 § 49-13-402, UT ST § 49-13-402

Current through 2016 Third Special Session

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ADDENDUM 2

UTAH CODE UNANNOTATED 1998

VOLUME 2

Complete through the
1998 GENERAL SESSION

LEXIS Law Publishing
Charlottesville, Virginia

48-2b-158. Taxation of limited liability companies.

A limited liability company established under this chapter or a foreign limited liability company transacting business in this state shall be taxed as provided in Section 59-10-801.

1994

TITLE 49**UTAH STATE RETIREMENT ACT****Chapter**

1. Administration.
2. Public Employees' Retirement Act.
3. Public Employees' Noncontributory Retirement Act.
4. Public Safety Retirement Act.
- 4a. Public Safety Noncontributory Retirement Act.
5. Firefighters' Retirement Act.
6. Judges' Retirement Act.
- 6a. Judges' Noncontributory Retirement Act.
7. Governor's and Legislative Service Pension Act.
8. Group Insurance Program Act.
9. Utah Public Employees' Disability Act.
10. Federal Retirees Lawsuit Settlement Provisions.

CHAPTER 1**ADMINISTRATION****Part 1****General Provisions****Section**

- | | |
|-----------|---------------------------------|
| 49-1-101. | Title. |
| 49-1-102. | Purpose — Liberal construction. |
| 49-1-103. | Definitions. |

Part 2**The Retirement Office and Board**

- | | |
|-------------|------------------------------------------------------------------------------------------------------------------------------------|
| 49-1-201. | Establishment of retirement office — An independent state agency — Adoption of programs and policies. |
| 49-1-201.5. | Repealed. |
| 49-1-202. | Establishment of Utah State Retirement Board — Quorum — Terms — Officers — Expenses and per diem — Membership Council established. |
| 49-1-203. | Powers and duties of board. |
| 49-1-204. | Powers and duties of executive director. |

Part 3**The Retirement Investment Fund**

- | | |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 49-1-301. | Creation — Board to act as trustees of the fund — Commingling and pooling of funds — Interest earnings. |
| 49-1-302. | Board duties with respect to fund — Asset allocation — Power to invest through executive officer — Custodian of fund — Fees to be paid from earnings — Holding title to investments. |
| 49-1-303. | Fund investment standard — Prudent man rule. |
| 49-1-304. | Administrative costs — Special costs — Payable from fund. |
| 49-1-305. | Purchase of liability insurance — Self-insurance option. |

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(d) Members appointed to the board between sessions of the Legislature shall serve with full authority until acted upon by the Senate in session.

(4) (a) Except as required by Subsection (b), all appointed members shall serve for four-year terms.

(b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Public employees or educators who retire or otherwise terminate their employment with a covered unit shall immediately resign from the board.

(5) Each year the board shall elect a president and vice-president from its membership. Each member shall be reimbursed for expenses incurred in service to the board. Each member shall receive a per diem plus travel expenses provided by law for attending board meetings.

(6) The board shall establish a membership council to advise and counsel with the board and the director on policies affecting members of the various systems administered by the retirement office. The board may pay the travel expenses of members who attend council meetings.

(7) Beginning July 1, 1991, the membership council shall be composed of 13 members selected as follows:

(a) Three members shall be school employees selected by the governing board of an association representative of a majority of school employees who are members of the Public Employees' Retirement System or the Public Employees' Noncontributory Retirement System.

(b) One member shall be a classified school employee selected by the governing board of an association representative of a majority of classified school employees who are members of the Public Employees' Retirement System or the Public Employees' Noncontributory Retirement System.

(c) Two members shall be public employees selected by the governing board of an association representative of a majority of the public employees who are members of the Public Employees' Retirement System or the Public Employees' Noncontributory Retirement System.

(d) One member shall be a city or town officer or employee selected by the governing board of an association representative of the cities and towns who are members of the Public Employees' Retirement System or the Public Employees' Noncontributory Retirement System.

(e) One member shall be a county officer or employee selected by the governing board of an association representative of counties who are members of the Public Employees' Retirement System or the Public Employees' Noncontributory Retirement System.

(f) One member shall be a representative of members of the Judges' Retirement System selected by the Judicial Council.

(g) One member shall be a representative of members of the Public Safety Retirement System selected by the governing board of an association representative of the majority of peace officers who are members of the Public Safety Retirement System.

(h) One member shall be a representative of members of the Firefighters' Retirement System selected by the governing board of an association representative of the majority of paid professional firefighters who are members of the Firefighters' Retirement System.

(i) One member shall be a retired member selected from the Utah Association of Retired Public Employees.

(j) One member shall be a retired member selected from the Utah Retired School Employees' Association.

(8) (a) Members shall be appointed as provided for Subsection (7).

(b) Except as required by Subsection (c), as terms of current council members expire, the board shall appoint each new member or reappointed member to a four-year term.

(c) Notwithstanding the requirements of Subsection (b), the board shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(d) Each term expires on June 30 in the year of expiration.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(9) The council shall designate one council member as chairman annually.

(10) The council shall:

(a) recommend benefits and policies for members of any system administered by the board to the board and to the Legislature;

(b) recommend procedures and practices to improve the administration of the system and the public employee relations responsibilities of the board and office;

(c) examine the record of all decisions affecting retirement benefits;

(d) submit nominations to the board for the position of executive director if that position is vacant; and

(e) act upon all other duties assigned to it by the board.

49-1-203. Powers and duties of board.

(1) The board shall:

(a) appoint an executive director to administer the retirement office;

(b) receive and act upon reports covering the operations of the systems, plans, programs, and funds administered by the retirement office;

(c) ensure that the systems, plans, programs, and funds are administered according to law;

(d) sit as a board of appeal on any appeal filed by a member of a system, plan, or program or by a covered employer;

(e) examine and approve an annual operating budget for the retirement office;

(f) serve as investment trustees of the retirement fund;

(g) maintain, in conjunction with participating employers and members, the systems, plans, and programs on an actuarially sound or approved basis, subject to the responsibility of the Legislature to adjust benefits and contribution rates when recommended by the board;

(h) receive and act upon recommendations of the executive director;

(i) recommend to the governor and Legislature any necessary or desirable changes in the statutes governing the systems, plans, and programs administered by the retirement office;

(j) develop broad policy for the long-term operation of the various retirement systems, plans, and programs and is granted broad discretion and power to perform policymaking functions, including the specific authority to interpret and define any provision or term under this act when the board provides written documentation which demonstrates that the interpretation or definition is

notes uniformity in the administration of the systems or maintains the actuarial soundness of the systems;

(k) establish the compensation of the director and adopt compensation plans and policies based on market surveys for fiduciary and administrative positions in the office;

(l) regulate the duties of employing units and other public authorities which are imposed upon them by this title and specify the time, place, and manner in which contributions shall be withheld and paid, and obtain any reports necessary for the administration of this title;

(m) adopt rules consistent with this title for the management of the systems, plans, and programs in order to carry out the purposes of this title, and perform all other acts necessary for the administration of the retirement systems, plans, and programs;

(n) comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings;

(o) otherwise exercise the powers and perform the duties conferred on it by this title; and

(p) provide for audits of the retirement system.

(2) The board may:

(a) subpoena witnesses and compel their attendance to testify before it, for which purpose each member and the secretary of the board may administer oaths and affirmations to witnesses and others transacting business of the retirement system;

(b) establish membership councils to advise the board and the director on policies affecting members of any system administered by the board and may pay the travel expenses of members who attend council meetings; and

(c) sue and be sued in its own name. 1997

49-1-204. Powers and duties of executive director.

The executive director shall:

(1) act as the executive officer of the board and the retirement office;

(2) administer the various acts, systems, plans, programs, and functions assigned to the board or office;

(3) develop and promulgate, with the approval of the board, administrative rules which are within the authority granted by this title, in the administration of the various retirement systems, plans, and programs;

(4) transmit to the board any appeals received from members of any retirement system, plan, or program under this title, or any covered employer, arising out of a ruling of the director, and to arrange a hearing before the board for any affected party;

(5) keep the board, the governor, the Legislature, and its agencies, and other affected officers, associations, and groups informed on the operations of the retirement office;

(6) recommend to the board any necessary or desirable changes in the retirement statutes;

(7) serve as a consultant on all retirement legislation;

(8) recommend to the board an annual administrative budget covering the operations of the retirement office and, upon approval, submit the budget along with the actuarial status of the fund to the governor and the Legislature for examination and comment; after which the director shall direct and control the subsequent expenditures of the budget;

(9) employ, within the limitations of the budget, staff personnel and consultants to administer the retirement systems, plans, programs, and funds assigned to the retirement office, including actuaries, attorneys, medical examiners, investment counselors, accountants, and clerical and other assistants to accomplish the purpose of the retirement office;

(10) develop, with approval of the board, common administrative procedures and rules for each of the retirement systems, plans, and programs administered by the retirement office;

(11) establish, with approval of the board, independent records for each of the retirement systems, plans, and programs or combine all records using acceptable principles of fund accounting to identify the assets and vested interests of each retirement system, plan, or program;

(12) credit contributions of employers and other accounts with interest at the rate adopted in accordance with Subsection (13);

(13) from time to time, upon the recommendation of the consulting actuary, adopt interest rates, mortality tables, and other tables necessary for the administration of the systems, plans, and programs;

(14) keep in convenient form all records and accounts necessary for the administration of the systems, plans, and programs and data for investigation of its experience and its actuarial valuation;

(15) consolidate into one warrant all monthly payments of annuities, pensions, and subsistence payments made to each retired member as long as the integrity of the various funds is maintained through appropriate accounting records which shall be established;

(16) comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in any adjudicative proceedings conducted by the director; and

(17) from time to time, but at least biennially, and in cooperation with the Office of Legislative Research and General Counsel, make an actuarial investigation into the mortality, service, and other experience of the members and beneficiaries of the systems, plans, and programs, actuarially value the assets and liabilities of the administered funds and accounts, determine the rate of interest being earned by the funds, and, based upon all these determinations and factors, including items requested by the Office of Legislative Research and General Counsel, shall confer with that office and report findings of the investigation, with recommendations, to the Legislature along with any changes in the rates of contribution or benefits that are necessary to the security of the system, plan, or program. Costs of the investigation, as well as all actuarial consulting and other services, shall be paid from the interest earnings of the fund. 1996

PART 3

THE RETIREMENT INVESTMENT FUND

49-1-301. Creation — Board to act as trustees of the fund — Commingling and pooling of funds — Interest earnings.

(1) There is created for the purpose of enlarging the investment base and simplifying investment procedures and functions a common trust fund known as the "Utah State Retirement Investment Fund."

(2) (a) The board shall act as trustees of the fund, and through its executive officer, may commingle and pool the funds and investments of any retirement system, plan, or program into the Utah State Retirement Investment Fund, as long as the principal amounts of the participating funds do not lose their individual identity and are maintained as separate trust funds on the books of the retirement office.

(b) In combining the investments of any fund, each of the participating funds shall be credited initially with its share of the total assets transferred to the Utah State Retirement Investment Fund, the calculation being made

on the basis of the fair market value of the various investments at the time the investments are credited to the Utah State Retirement Investment Fund.

(c) Subsequent transfers of additional capital from participating funds shall be credited similarly to its respective trust account.

(d) Funds may be withdrawn or transferred out of the Utah State Retirement Investment Fund and credited back to a participating fund, but at no time may the income or principal or equity credit belonging to one participating fund be transferred to another.

(3) The assets of the participating funds are for the exclusive benefit of the members and may not be diverted or appropriated for any purpose other than that permitted by this chapter or the chapters covering the individual participating funds.

(4) (a) Interest and other earnings shall be credited to each participating fund on a pro rata basis monthly, or otherwise as directed by the board.

(b) A portion of the interest and other earnings of the common trust fund may be credited to a reserve account within the Utah State Retirement Investment Fund to meet adverse experiences arising from investments or other contingencies. Each participating fund shall retain its proportionate equity in the reserve account. 1998

49-1-302. Board duties with respect to fund — Asset allocation — Power to invest through executive officer — Custodian of fund — Fees to be paid from earnings — Holding title to investments.

(1) The board shall review and establish asset allocation of all funds assigned to the board or retirement office for investment, and through its executive officer, shall determine the method of investing the funds to ensure the greatest return commensurate with sound financing adequately safeguarded. The board, through its executive officer, may invest and reinvest the money in the retirement fund or funds and may provide for the holding, purchasing, selling, assigning, transferring, and disposing of any of the securities and investments in which any of the money of the fund is invested. The board shall appoint a custodian for the funds and securities under its control. Fees for all services shall be paid from the interest earnings of the investment fund.

(2) The board may hold title to real estate or any other fund investment in the name of the Utah State Retirement Investment Fund or may by rule determine under what name or names it holds title to real estate or any other fund investment. 1996

49-1-303. Fund investment standard — Prudent man rule.

The fund shall be invested in accordance with the prudent man rule established under Section 75-7-302. 1987

49-1-304. Administrative costs — Special costs — Payable from fund.

General administrative costs of operating the retirement office shall be assessed to the retirement systems, plans, programs, and funds administered upon the basis of cost and service performed. Special costs, such as actuarial studies and service, investment counsel, legal fees, and medical examiner charges, which are or can be directly attributable to a system, plan, program, or fund shall be paid directly from the respective fund involved. Since the administrative funds are derived from the systems, plans, and programs administered by the retirement office, rather than an administrative appropriation from the General Fund, any balance in the administrative fund at the end of a fiscal or biennial period shall remain in the fund, but shall be taken into consideration in preparing a subsequent budget. 1996

49-1-305. Purchase of liability insurance — Self-insurance option.

The retirement office may purchase commercial insurance, self insure, or purchase excess commercial insurance in excess of the limits provided by the Governmental Immunity Act against any risk created or recognized by the Governmental Immunity Act or any other action for which the board, or any of its employees, may be held liable.

PART 4

SERVICE CREDITS

49-1-401. Service credit — Transfer of credit or employment — Provisions applicable for service credit — Direct transfer or rollover.

(1) The board shall make the transfer of service credit together with related member and employer contributions from one retirement system to another upon terms and conditions established by the board. The terms and conditions may not result in a loss of accrued benefits. Transfer of employment from a position covered by one public retirement system to a position covered by another system does not either:

(a) cause the employee to lose active membership status in the system; or

(b) constitute a termination of employment prerequisite to qualifying for a refund of contributions.

(2) In the establishment of service credits, the following provisions apply:

(a) Any member of a retirement system who performs covered services shall receive service credit for the service.

(b) Any member who is not in an active service status because of sickness, injury, leave of absence, including service in the armed forces of the United States, or because the member is in the process of transfer from one employing unit to another shall, upon returning to active status, have the same rights and be subject to the same requirements as other employees under this title.

(c) (i) For the purpose of computing the amount of member's retirement allowance, no service credit may be given to any member for the period during which the member is on leave of absence without compensation, except as otherwise provided in this title or Subsection (2)(c)(ii).

(ii) A member with full-time public service who, on an approved leave of absence may purchase, or the employer may purchase on their behalf, credit equal to the public service by making contributions fixed by the administrator.

(d) No service credit may be given to a member for the period during which the member was in any inactive status unless the service is purchased according to the provisions of this title.

(e) Credit for service shall be granted in proportion to the work performed under rules adopted by the board.

(f) In no case may a retirement allowance or other benefit be granted under this title which is based upon the same service as has been the basis for retirement benefits under some other state retirement system.

(g) Members shall be credited with any fractions of years of service to which they are entitled.

(h) The board shall fix the minimum time per day, month, and per year upon the basis of which one year of service and proportionate parts of a year shall be credited toward qualification for retirement. Service may be computed on a fiscal or calendar year basis and portions of years served shall be accumulated and counted as service.

In any event, all of the service rendered in any one fiscal or calendar year may not count for more than one year.

(i) Any employee who is transferred to the Division of Information of Technology Service from the Department of Public Safety, and who was a member in the Public Safety Retirement System or Public Safety Noncontributory Retirement System, shall be entitled to remain a member in the system he participated in prior to being transferred regardless of whether the employee's current position is covered by the respective public safety system. This exception does not apply to any person hired on or after January 1, 1992.

(3) (a) The board may adopt rules under which a member may make the necessary contributions to the system for purchases or redeposits under this title through a direct transfer, direct rollover or rollover from a qualified plan under Section 401, Internal Revenue Code, or an eligible individual retirement account.

(b) The board may reject any contributions if the board determines the tax status of the system would be jeopardized by allowing the contribution.

(c) For purposes of this section, a direct rollover shall be determined under the provisions of Section 401(a)(31), Internal Revenue Code.

1997

49-1-402. Purchase of military service credit — Limitations — Exceptions.

(1) (a) Members with full-time military service not qualifying for service credit under this title may purchase credit for that military service or the employer may make the purchase on behalf of the member by making contributions to the system in an amount recommended by the consulting actuary.

(b) Contributions shall be based on age and salary and the purchase shall be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.

(c) Military service credit acquired in this manner is limited to a maximum of four years.

(d) Total payment must be completed prior to retirement or service will be prorated in accordance with the amount paid.

(2) Any employee of a covered unit, who has status as a member of a retirement system authorized by this title and is absent from employment by reason of an official call to service in the armed forces of the United States, may receive service credit for that service as follows:

(a) the member and the employer shall make the appropriate contributions to the retirement system in which the member participated at the time of the official call, according to the law governing that particular system;

(b) the contributions shall be made during the period of the official call, or a contribution adjustment shall be made subsequent to the official call, but at least five years prior to the member's retirement date;

(c) the member must return to covered service upon receiving an honorable discharge from military service and there may not be intervening employment outside of covered service; and

(d) contributions shall be based on the member's compensation at the time of the official military call.

1995

49-1-403. Members and beneficiaries subject to chapter — Furnishing of information — Confidentiality of information.

(1) Every member and beneficiary is subject to this chapter and to all rules adopted by the board under this chapter. Each member and beneficiary shall furnish to the retirement office

any information required by the executive director affecting the member's status as a member or beneficiary.

(2) All data filed with the retirement office is confidential, and no information contained in any record pertaining to individual data may be divulged by any official or employee of the office. The information shall be used for the sole purpose of carrying into effect the provisions of this chapter. The record may not be open to inspection to any person except the board, the employees of the retirement office, and the employing unit.

1987

49-1-404. Benefit protection contract authorized.

(1) Any department or political subdivision covered by any system administered by the retirement office that has established a paid salary protection program under which its officers or employees, during periods of disability arising out of sickness or accident, are paid by it or by an insurance underwriter at the disabled member's rate of compensation in effect at the time disability occurred and the program is substantially equivalent to the program offered under Title 49, Chapter 9, may with the approval of the board, enter into a "benefit protection contract" with the retirement office.

(2) The benefit protection contract shall provide a means whereby:

(a) the disabled member is considered to be an active participating member of this retirement system and as such continues to accrue full-time service and salary credits during the time employer contributions, based upon the member's full rate of pay in effect at the time disability began, are paid to the retirement office;

(b) the disabled member or beneficiary remains eligible during the contract period for any retirement system benefits provided by the retirement system that covers the member; and

(c) the benefit for the disabled member is improved by the annual cost-of-living increase factor applied to retired members of the system that covered the employee at the time of disability.

(3) (a) The board shall establish the manner and times when employer contributions are to be paid.

(b) A failure to make the required payments is cause for the board to cancel the contracts as to any individual covered by the contract.

(c) Service and salary credits granted and accrued up to the time of cancellation, however, may not be forfeited.

(4) The board may adopt rules to implement and administer this section.

1996

49-1-405. Permanent relinquishment of benefit — Procedure.

Any retired member or beneficiary receiving a continuing benefit who for any reason desires to permanently relinquish that retirement benefit may do so at any time after the effective date of retirement. The relinquishment of the benefit is irrevocable 30 days after the witnessed signing of the waiver agreement by the member and the beneficiary.

1990

49-1-406. Retirement credits from different systems or plans — Eligibility and calculation of benefits.

(1) Any member who has years of service credit from two or more systems or plans administered by the board which is not concurrent service may combine these credits for purposes of determining eligibility for retirement.

(2) To be eligible for the calculation under Subsection (3), the member's years of service credits earned under the two or more different retirement systems shall at least equal the minimum number of years required to retire under the system from which the member is seeking to retire.

(3) If the member meets the requirements of Subsection (2), the board shall calculate the member's retirement allowance using all credits earned from any retirement system, with no actuarial reduction applied to the allowance, except the years of service credit used to calculate the benefit shall be increased or decreased to reflect the value of the assets transferred to effectuate the calculation of the allowance.

(4) The retirement board shall adopt rules to establish the standards used for calculating any increase or decrease in the years of service credit. 1997

49-1-407. Member with public service not otherwise qualifying for benefit may purchase credit.

(1) A member may purchase service credit equal to the member's service in the following:

- (a) federal employment;
- (b) private school employment;
- (c) public employment in this or another state that does not qualify for service credit under a system administered by the board;
- (d) employment in a university or a public school system if the member is on a leave of absence for reasons relating to employment; or
- (e) forfeited public service in this state if the member does not qualify for a retirement benefit for that service.

(2) To purchase credit, the member shall pay an amount fixed by the administrator that is established on an actuarial equivalent basis.

(3) The purchase may be made through payroll deductions or through a lump-sum deposit.

(4) The employer may make the purchase on behalf of the member.

(5) Total payment must be completed prior to retirement or service will be prorated in accordance with the amount paid. 1996

PART 5

TERMINATION OF MEMBERSHIP — REDEPOSITS

49-1-501. Termination of membership.

Any member who dies or retires, or applies for and receives a refund of the member's accumulated contributions upon termination of service in a status requisite for membership, shall thereupon cease to be a member. 1987

49-1-502. Refunds of vested contributions — Transfers of contributions.

(1) If a member shall for any cause, except retirement, permanent or temporary disability, or death, cease to be employed in covered services for an employer then the member may:

- (a) By signing a written request, affirming therein that the member has neither applied for, nor contemplates further employment with a covered unit, and directing the request to the retirement office, receive a refund of all accumulated contributions, less a withdrawal fee the amount of which the board shall establish by rule for the purpose of reimbursing its administrative fund for the cost entailed by the withdrawal. Notwithstanding the written request, if a member who has requested a refund accepts employment with another covered unit within the 60-day period, the member shall inform the retirement office immediately. In the event of this election, a terminating employee, upon later reemployment by an employer under this title, unless the employee redeposits the refund as permitted by this section, shall be treated as a new employee and the employee's service history and benefit rights shall then be based upon current services from the date of reemployment in covered services.

(b) Leave the member's account in the fund intact. In the event of this election, a terminating employee shall retain status as a member of the system, except for a lack of contributions paid into the fund by the member on the member's behalf. In the event of reemployment by an employer for services covered by this title, the employee's service history and benefit rights shall be based upon the service credit accredited to the employee at the time of the employee's most recent termination of employment, as well as upon the current service credit that is acquired as the result of reemployment.

(2) Upon the attainment of retirement age, an inactive member has the same rights to retirement benefits, if eligible, as any active employee member.

(3) Refunds of vested contributions may not be made prior to 60 days from the last day the contributions were made, and only upon the termination of the member.

(4) No refund may be made to an active member of any retirement system administered by the board. Contributions made in error will be returned to the employing unit.

(5) Members who are exempted from a retirement system administered by the board but who remain employed by a covered unit may request a plan-to-plan transfer of vested untaxed employee contributions to a salary deferral plan administered by the board, as permitted by federal law. 1999

49-1-503. Redeposits of refunds — Time period.

(1) A member of any system who withdraws accumulated contributions upon a previous termination of employment and who returns to covered employment in a status prerequisite for membership may redeposit the accumulated contributions withdrawn, together with interest charged from the date of refund through the month of payment, at rates compounded annually under Section 49-1-504. If a redeposit is made, service credit shall be restored and credited to the same retirement system from which the refund was taken providing that the total redeposit is made prior to retirement.

(2) A member may redeposit a previous refund and interest charges in one lump sum or may redeposit the refund amount and interest charges in monthly installments by payroll deduction in a time period determined by the executive director. 1992

49-1-504. Rate of interest on redeposits, withdrawals, and delinquent contributions.

The rate of interest charged on redeposits of refunds, withdrawals, or delinquent contributions is equal to the effective yield, rounded off to the nearest whole or quarter percent rate, which has been earned by the Utah State Retirement Investment Fund at the end of each preceding calendar year, as determined by the executive director and approved by the board. 1987

49-1-505. Reemployment of a retired member of a system administered by the board.

The following laws govern the reemployment of a member of any system administered by the board who has retired from any agency and who returns to work at that agency after retirement. A member of any system administered by the board who has retired from any agency and who returns to work for a private employer or at a different agency from which the member retired is not subject to any reemployment restrictions under this section, except as provided in Subsection (4).

- (1) (a) (i) If a member of any system administered by the board retires from any agency and is reemployed by the agency from which the member retired, including exempt positions, but excluding part-time or full-time elected officials, the

employer shall immediately notify the administrator.

(ii) If the member has full-time employment and is not subject to Subsection (1)(b), the administrator shall cancel the member's retirement allowance and reinstate the member to active member status.

(iii) This cancellation of retirement and reinstatement to active status is effective on the first day of the month following the date of reemployment.

(iv) If a member's retirement allowance is cancelled and the member is reinstated to active member status pursuant to this subsection, the member may not retire again with a recalculated benefit for a two-year period from the date of cancellation of the original retirement. If the member retires again within the two-year period, the original retirement benefit shall be resumed.

(v) A reinstated member shall be credited with the service credits standing to the member's account at the time of the first retirement and from that time shall be treated as a member of the system in all respects, including the accrual of additional service credits but subject to recalculation of the retirement allowance under Subsection (4).

(b) (i) If the member is reemployed on a part-time basis or is not an elected official and is otherwise subject to Section 49-4-205, 49-4a-206, or 49-5-204, that member or employee may earn, without penalty, compensation from that position or employment which is not in excess of the exempt earnings permitted by Social Security.

(ii) If a member or an employee receives compensation in a calendar year in excess of the limitation, 25% of the retirement allowance shall be suspended.

(iii) The effective date of a suspension and reinstatement of an allowance shall be set by the administrator.

(iv) Any suspension of a member's retirement allowance pursuant to Subsection (1)(b)(ii) shall be calculated on a calendar year basis.

(2) The member and employer shall maintain an accurate record of gross earnings in employment after retirement, shall report the gross earnings on a monthly basis to the retirement office, and shall immediately notify the administrator in writing of any postretirement earnings under Subsection (1)(a) and whether postretirement earnings equal or exceed the exempt earnings under Subsection (1)(b).

(3) If a member is reinstated to active service and subsequently retires after the two-year period as provided in Subsection (1)(a)(iv), the member's retirement allowance shall be calculated using:

(a) the formula in effect at the date of the member's original retirement for all service prior to that date; and

(b) the formula in effect at the date of the subsequent retirement for all service rendered between the first and the subsequent retirement dates.

(4) A member who has retired from any agency and who returns to work at that agency or a different agency from which the member retired may not accrue any additional service credit, except that a member who cancels the retirement allowance under Subsection (1) may earn additional service credit.

(5) For the purposes of this section "part-time" employment means employment contemplated as less than full-time by the employer at the time of hire.

(6) The board may make rules to implement this section. 1995

PART 6

ADMINISTRATION

49-1-601. Payment of employer contributions, fees, and premium taxes — Failure to comply — Interest added — Adjustments to be made.

(1) The employer contributions, fees, and premium taxes shall be paid to the fund in accordance with rules adopted by the board.

(2) Any employing unit that fails to withhold the amount of any employee contributions is required to pay the contribution, together with any employer contribution, fee, or premium tax, to the fund, if necessary, out of its own funds.

(3) (a) If an employing unit does not make the payments required by this title as the payments become due, there is added as part of the amounts due, except for corrections in the amounts of contributions, fees, and premium taxes arising out of error in computation, interest established under this title.

(b) The board may waive all or any part of the interest if the board finds there were extenuating circumstances surrounding any delinquencies.

(4) If more or less than the correct amount of contributions, fees, and premium taxes required by this title is deducted with respect to any payment of compensation, the employer shall make the necessary adjustment with or without interest as required by the board. 1995

49-1-602. Employing unit to maintain records — Penalties for failure to comply.

(1) Each employing unit shall maintain records and file reports relating to compensation, employees, service, and other factors relating to the proper administration of this title under rules adopted by the board.

(2) A penalty of 1% of the covered unit's last monthly employer contribution to the system may be assessed by the board for each week a required payroll report of members' earnings and employer contributions is delinquent beyond a 60-day grace period beginning with the month after the month in which the report is due. 1992

49-1-603. Determination of benefits — Errors in records or calculations — Correction of errors by the administrator.

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

(2) Errors in the records or in the calculations of the retirement office which result in any member or beneficiary receiving more or less than the member or beneficiary is entitled to receive shall be corrected by the administrator. Future payments shall be made to any member or beneficiary, insofar as practicable, on an actuarially equivalent basis so as to:

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

(b) recover any overpayment.

(3) When it is documented that an incorrect calculation by an employing unit has resulted in a decreased benefit to a retiree, and the incorrect calculation is due to a bona fide error in employer records, the error may be corrected by the administrator, if the employing unit makes the calculation

adjustment required by the administrator to keep the retirement system affected actuarially sound.

(4) If a salary dispute exists between an employing unit and an employee at the time of the employee's retirement which will affect the employee's retirement benefit calculation, and notice of the dispute is given to the retirement office prior to the calculation of a member's benefit, the benefit may be paid based on the member's stated retirement date and on the records available at that time and then recalculated upon settlement of the dispute according to Subsection (2). 1989

49-1-604. False statements or records — Unlawfully cashing benefit checks.

(1) Any person who knowingly makes any false statement, or who falsifies or permits to be falsified any record necessary for carrying out the intent of this title is in violation of Section 76-6-504.

(2) Any person cashing a benefit check to which that person is not entitled is in violation of Section 76-6-501. 1989

49-1-605. Extra monthly payments authorized — Adjustment of benefits and allowances — Incorporation into normal allowance.

(1) The board may make extra monthly payments to retired members of any system with the payments being funded from investment earnings from retired member reserve funds which are set aside by the board to pay retirement allowances. Payments in total shall be limited to no more than the annual amount of investment income which is in excess of the actuarial interest rate adopted by the board.

(2) In making the computation of benefits, the board shall take into consideration the retirement option under which the person retired and make the appropriate actuarial adjustments.

(3) Retirement allowance adjustments made under this section shall be based upon the Consumer Price Index published by the United States Bureau of Labor Statistics and may be incorporated in the normal allowance paid to retirees. 1987

49-1-606. Beneficiary designations — Revocation of beneficiary designation — Procedure — Beneficiary not designated — Payment to survivors in order established under the Uniform Probate Code — Restrictions on payment — Payment of deceased's expenses.

(1) The beneficiary designation in a member's file at the retirement office at the time of the member's death is binding in the payment of any benefits due under this title.

(2) A member may revoke a designation of beneficiary at any time and may file a different beneficiary designation by executing and filing with the retirement office a written beneficiary designation on forms provided by the retirement office, except where an optional continuing plan is chosen, or the law makes a specific benefit designation to a dependent spouse, in which case the beneficiary designation may not be revoked.

(3) If no beneficiary is designated or if the estate is the named beneficiary and if a deceased member does not leave an estate requiring probate in the absence of the amounts due from the retirement system, unless otherwise provided in this title, all benefits payable from the retirement system, including retirement benefits accrued but not received prior to death, may be paid or applied to the benefit of the surviving next of kin of the deceased in the order of precedence established under Title 75, Chapter 2, the Utah Uniform Probate Code.

(4) No payment may be made to persons included in any of these groups if at the date of payment there are living persons in any of the groups preceding it. Payment to the persons in

any group based upon receipt from those persons of affidavit in a form satisfactory to the administrator that:

(a) there are no living individuals in the group preceding it;

(b) that the probate of the estate of the deceased has not been commenced; and

(c) that more than three months have elapsed since the date of death of the decedent, shall be in full satisfaction and discharge of all claims for benefits under this title payable by reason of the death of the decedent.

(5) If the location of the nominated beneficiary cannot be ascertained or if the nominated beneficiary is the estate of a deceased person, the administrator may pay the costs of the deceased's last illness, convalescent care, and funeral expenses directly to the undertaking establishment, hospital, doctor, or convalescent home which provided the service. The administrator shall require verified statements of the charges before making partial or full payment. The payment shall discharge the obligation of the system and of the fund up to the amount paid. 1989

49-1-607. Benefits payable in name of beneficiary — Delivery.

(1) Any benefits payable to a beneficiary or dependent beneficiary shall be made in the name of the beneficiary or beneficiaries and delivered to the lawfully appointed guardian or conservator of the beneficiary, or delivered as otherwise ordered by a court of competent jurisdiction pursuant to Title 75, Utah Uniform Probate Code. In those cases where the benefit involves a payment not to exceed an amount authorized by the Utah Uniform Probate Code to any one beneficiary, the administrator may, without the appointment of a guardian or conservator or the giving of a bond, pay the amount due to the beneficiaries themselves or to the persons, or institutions assuming their support in either a lump sum or in monthly amounts, and the total of the payments so made shall be a full discharge and release to the system from any further claims.

(2) All continuing monthly benefits payable to beneficiaries upon the death of an active member shall be paid on the first day of the month following the date of death of the member. 1987

49-1-608. Benefits and money in the fund exempt from taxation — Exceptions.

The benefits accrued or paid to any beneficiary of any system administered by the retirement office and the accumulated contributions, money, and securities in the fund created by this title are exempt from any state, county, or municipal tax, except that the retirement allowance, a refund of contributions, or other benefits subject to the federal income tax, which are received by a member or beneficiary of any system administered by the board and which have not been taxed is subject to Title 59, Chapter 10. 1989

49-1-609. Nonassignability of benefits or payments — Exemption from legal process — Deduction of amounts owed.

(1) Except as provided in Subsection (4), the right of any member or beneficiary to any benefit, payment, or any other right accrued or accruing to any person under this title and the assets of the fund created by this title are not subject to alienation or assignment by the member or beneficiary and are not subject to attachment, execution, garnishment, or any other legal or equitable process.

(2) This section may not be construed to prohibit the administrator from deducting medical or other insurance premiums from a retiree's allowance as requested by the retiree providing that any request is within limitations and rules prescribed by the board.

(3) (a) Notwithstanding Subsection (1), the retirement board shall provide for the division of a member's retirement allowance or refund of contributions upon termination to former spouses and family members pursuant to an order of a court of competent jurisdiction with respect to domestic relations matters on file with the retirement office.

(b) The court order shall specify the manner in which the retirement allowance or refund of contributions shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

(c) The board may also provide for the division of a member's defined contribution account.

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

(4) In accordance with federal law, the board may deduct the required amount from any benefit, payment, or other right accrued or accruing to any member of a system, plan, or program under this title to offset any amount that member owes to a system, plan, or program administered by the board.

1995

49-1-610. Right of appeal to hearing officer — Council review of hearings — Further board review — Rules of procedure applied — Judicial review.

(1) (a) All members of a system, plan, or program under this title shall acquaint themselves with their rights and obligations as members.

(b) A member shall request a ruling by the administrator on any benefit claim or legal right under this title.

(c) Any person who is dissatisfied by a ruling of the administrator with respect to any benefit claim or legal right under any system, plan, or program under this title shall request a review of that claim by a hearing officer.

(d) The hearing officer shall:

(i) be hired by the executive director after consultation and review with the membership council; and

(ii) follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(2) (a) (i) The hearing officer shall hear and determine all facts pertaining to applications for benefits under any retirement system, plan, or program under this title and all matters pertaining to the administration of the system.

(ii) The membership council may examine the record of the hearing, provide a recommendation to the board, and recommend any necessary changes in retirement policy or procedure to the Legislature.

(b) (i) If the executive officer of the board cannot determine from the records or other information available the length of service, compensation, or age of any member, the executive officer may estimate, for the purpose of any determination required to be made, any of these factors.

(ii) The board shall review all decisions of the hearing officer.

(3) Any applicant may file an application for reconsideration according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, upon any of the following grounds:

(a) that the board acted in excess of its powers;

(b) that the order or award was procured by fraud;

(c) that the evidence does not justify the determination of the board; or

(d) that the applicant has discovered new material evidence that could not, with reasonable diligence, have been discovered or procured at the hearing.

(4) A member aggrieved by the board's decision may obtain judicial review by complying with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

1993

49-1-611. Additional plans authorized — Subject to federal and state laws — Rules to implement this provision — Costs of administration — Limitations on eligibility — Protection of tax status.

(1) The board may establish and administer additional benefit plans under Sections 401(k) and 457 of the Internal Revenue Code. Employee and employer contributions shall be permitted according to the provisions of these plans as established by the board. The amount of these accumulated contributions, together with dividend or interest credits, are vested in the member, and are nonforfeitable.

(2) Earnings credited to accounts established as a result of this action shall be at a rate fixed by the board.

(3) Contributions shall be invested as provided by contract in accordance with federal and state law.

(4) The board may establish rules to implement and administer this section. Costs of administration may be paid from the interest earnings of the funds accrued as a result of deposits or as an assessment against each account, to be decided by the board. All funds and deposits may be invested as a separate account or accounts in the Utah State Retirement Investment Fund.

(5) This supplemental program shall be limited to members who contract to participate in the program a minimum of one year.

(6) The board may take the actions necessary to protect the tax qualified status of the plans, systems, and programs under its control, including the movement of members from defined contribution to defined benefit plans or the creation of excess benefit plans authorized by federal law, and shall report its actions to the Legislature at the subsequent legislative session.

1998

49-1-612. Required distributions.

(1) Benefit allowance payments under this title must begin by the later of April 1 of the calendar year following the year in which the member reached age 70 ½ or retires. The member's entire interest in the plan must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary.

(2) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest shall be distributed at least as rapidly as under the method of distribution prior to the member's death.

(3) When a member dies before distribution of benefits has begun, the entire interest of the member shall be distributed within five years of the member's death. The five-year payment rule does not apply to any portion of the member's interest which is payable to a designated beneficiary over the life or life expectancy of the beneficiary and which begins within one year after the date of the member's death. The five-year payment rules do not apply to any portion of the member's interest which is payable to a surviving spouse payable over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age 70 ½.

1990

49-1-613. Vesting on termination of plan.

If any retirement plan established under this title is terminated, the accrued benefits of each member in the plan shall immediately become 100% vested and nonforfeitable.

1990

49-1-614. Election to grandfather — Applicability of provisions.

Notwithstanding any other provision of this title, the retirement plan or program allowance payable to any person who becomes a member of any system, administered by the board

on or after January 1, 1990, may not exceed the limitation imposed by Section 415 of the Internal Revenue Code of 1986, which is incorporated by reference. This constitutes an election of the grandfather provision under Section 415(b)(10)(C) of the Internal Revenue Code. 1990

49-1-615. Benefits information.

(1) The retirement board shall provide the following information, by means of a form to be adopted by the board, to each employing unit participating in a plan, program, or system administered by the board:

- (a) all retirement benefits available to participants in a retirement system administered by the board, including the right to participate in deferred compensation programs and rights upon termination;
- (b) all group health and dental insurance benefits available to participants, including conversion and coverage rights upon termination;
- (c) all group life insurance benefits and other death benefits, including conversion and coverage rights upon termination;
- (d) all long-term disability programs available to participants;
- (e) any other benefits that the board may make available to eligible employers and their employees; and
- (f) the address and telephone number of the division of the retirement office responsible for each of these plans, programs, and systems.

(2) The participating employing unit shall provide the information under Subsection (1) to each eligible employee immediately upon termination of service, leave of absence, or retirement.

(3) Each eligible employee shall sign the form provided under Subsection (1), a copy of which shall be forwarded to the retirement office immediately.

The dissemination of information to the employer by the board pursuant to this section constitutes presentment by the policyholder pursuant to Title 31A, Chapter 22, and other law. 1991

49-1-616. Status of documents and records at the retirement office.

(1) The retirement office may treat any document received by facsimile as an original if it pertains to member accounts and is forwarded by a member or employer.

(2) All records at the retirement office, filmed from facsimile or other sources, or produced from optical imaging or other technology, have the same legal effect as the original record. 1993

PART 7

TAXATION PROVISIONS

49-1-701. Retirement allowance increase to offset tax liability — Administration.

(1) This section applies to members of any system administered by the board under this title, whose retirement allowance remained exempt from the tax imposed under Title 59, Chapter 10, Individual Income Tax Act, pursuant to Section 2, Chapter 195, Laws of Utah 1988, but whose allowance has subsequently become subject to that tax.

(2) Any member who meets the conditions established under Subsection (1) shall receive the following:

- (a) the administrator shall calculate the member's retirement allowance pursuant to the formula governing the system from which the member retired;
- (b) the administrator shall then increase the allowance calculated under Subsection (2)(a) by 3%; and

(c) the adjusted retirement allowance under Subsection (2)(b) is the new basis upon which any future adjustments to benefits are made.

(3) (a) For all members who retire or are receiving retirement allowances in calendar year 1989, the administrator shall apply the 3% adjustment under Subsection (2) to all retirement allowances received in 1989, so that the period for which the allowance becomes subject to the tax under Title 59, Chapter 10, and the period for which the 3% adjustment is given are the same.

(b) For all members who retire after December 31, 1989, and who meet the requirements of Subsection (1), the administrator shall apply the 3% adjustment under Subsection (2) beginning on the effective date of retirement.

(4) Any penalty or interest for underpayment of taxes under Title 59, Chapter 1 or 10, shall be waived for members whose noncompliance is attributable to Section 49-1-608 and this section. This only applies to tax year 1989.

(5) The administrator shall comply with Title 59, Chapter 10, Part 4, with respect to withholding of taxes.

(6) (a) The retirement board shall annually certify the contribution rate necessary for each system to comply with this section and may adopt rules to administer this section.

(b) This contribution rate shall be reported separately from the total contribution rate necessary to fund the systems on an actuarially sound basis and may not be used in comparative studies of public employee benefits. 1994

whose account payable to the beneficiary amounts to \$100 or less, the account shall be closed and no further payment may be made.

1987

PART 8

MISCELLANEOUS

49-2-801. Repealed.

1989

49-2-802. Early retirement incentive — Eligibility for this early retirement plan — Calculation of benefit — Payment of costs of early retirement incentive — Savings to be appropriated by Legislature — Restrictions on reemployment.

(1) Any member of this system may retire and receive the benefit allowed under Subsection (2) if the member meets the following requirements as of the effective date of retirement:

(a) the member is eligible for retirement under Section 49-2-401, or otherwise has 25 years of service credit;

(b) the member elects to forfeit any stipend for retirement offered by the employing unit; and

(c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3)(a) or (3)(b).

(2) (a) A member who retires pursuant to Subsection (1) shall receive 2% of that member's final average salary for all years of service credit.

(b) An actuarial reduction may not be applied to the benefit granted under this section.

(3) In order to receive the benefit allowed by this section, a member shall submit an application to the retirement office as follows:

(a) For state and school employees under level A, the application shall be filed by May 31, 1987. The effective date of retirement shall then be set by the employee on the first or sixteenth day of July, August, or September, 1987. If a level A employee elects to retire, the administrator or employer may request the employee to delay the effective date of retirement until a later date, but no later than June 30, 1988. If the employee agrees to delay the effective retirement date, the effective date shall be delayed, but no service credit may be accrued after the original effective date of retirement elected by the employee, and no salary earned after that effective date may be used in the calculation of the final average salary for determining the retirement benefit.

(b) For political subdivisions under level B, the application shall be filed by September 30, 1987. The effective date of retirement shall then be set by the employee on the first or sixteenth day of July, August, September, October, November, or December, 1987.

(4) (a) The cost of providing the benefit under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary and approved by the board.

(b) The cost of providing the benefit under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.

(c) The rate increase under Subsections (a) and (b) shall be funded:

(i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection (d), which is funded by savings derived from this early retirement incentive and a work force reduction;

(ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in Title 53A, Chapter 17a, Minimum School Program Act; and

(iii) for political subdivisions under level B, by direct contributions by the employing unit.

(d) (i) Each year, any excess savings derived from this early retirement incentive which are above the costs of funding the increase and the costs of paying insurance, sick leave, compensatory leave, and vacation leave under Subsections (c)(i) and (c)(ii) shall be reported to the Legislature and shall be appropriated as provided by law.

(ii) In the case of Subsection (c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.

(iii) In the case of Subsection (c)(ii), the State Office of Education shall certify the amount of savings derived from this early retirement incentive.

(iv) The State Office of Education and the employing unit may not spend the savings until appropriated by the Legislature as provided by law.

(5) A member who retires under this section is subject to Section 49-1-505.

(6) The retirement board may adopt rules to implement and administer this section.

(7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

1993

CHAPTER 3

PUBLIC EMPLOYEES' NONCONTRIBUTORY RETIREMENT ACT

Part 1

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- 49-3-409. Part-time elective or appointive service — Computation of allowance.
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- 49-3-502. Repealed.

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- 49-3-701. Death benefit by means of group insurance policy — Proof of death requirements — Calculation of death benefit — Administration by board — Active and inactive member benefits — Payment of claim — State Tax Commission to provide information on dependents — Exclusion.
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- 49-3-801. Repealed.
- 49-3-802. Early retirement incentive — Eligibility for this early retirement plan — Calculation of benefit — Payment of costs of early retirement incentive — Savings to be appropriated by Legislature — Restrictions on reemployment.

PART 1**GENERAL PROVISIONS****49-3-101. Short title.**

This chapter is known as the "Public Employees' Noncontributory Retirement Act." 1987

49-3-102. Purpose.

The purpose of this chapter is to establish an alternative, noncontributory retirement plan for certain public employees which provides the following:

- (1) a uniform system of membership;
- (2) retirement requirements;
- (3) benefits for employees;
- (4) funding on an actuarially sound basis;
- (5) contributions made entirely by employers; and
- (6) economy and efficiency in public service. 1987

49-3-103. Definitions.

As used in this chapter:

- (1) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of the governing body of an employing unit and who earns \$500 or more per month over a 12-month period adjusted by the Bureau of Labor Statistics Consumer Price Index.

- (2) (a) "Compensation," "salary," or "wages" means the total amount of payments made by an employer to an employee for services rendered to the employer, including:

- (i) bonuses;
- (ii) cost-of-living adjustments;
- (iii) other payments currently includable in gross income and that are subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law; and
- (iv) amounts that the employee authorizes to be deducted or reduced for salary deferral or other benefit programs authorized by federal law.

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

- (c) "Compensation," "salary," or "wages" does not include:

- (i) the monetary value of remuneration paid in kind, such as a residence or use of equipment;
- (ii) all contributions made by an employer under any plan for the benefit of a participant;
- (iii) salary paid to an employee working under the minimum number of hours required for membership;
- (iv) salary paid to a temporary or exempt employee;
- (v) any payments upon termination, including accumulated lump-sum vacation, sick leave payments, or any other special payments; or
- (vi) uniform, travel, or similar allowances.

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

- (a) the State Board of Education and its instrumentalities;
- (b) any institution of higher learning and its branches;
- (c) any school district and its instrumentalities;
- (d) any vocational and technical school; and

- (e) any entity arising out of a consolidation agreement between entities under this definition.
- (4) "Effective date" of the noncontributory system means 12:01 a.m., July 1, 1986.
- (5) (a) "Employee" or "regular employee" means any regular full-time employee whose term of employment for an employer contemplates continued employment during a calendar or school year and who performs covered service for one or more employers.
- (b) "Employee" or "regular employee" means an officer, elective or appointive, who receives as compensation from an employer \$500 or more per month over a 12-month period adjusted by the Bureau of Labor Statistics Consumer Price Index.
- (6) "Employer" or "employing unit" means any department, educational institution, political subdivision, or eligible organization, or agency financed in whole or in part by public funds for which any employee or member performs services subject to this chapter.
- (7) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to Subsections (a), (b), and (c).
- (a) Except as provided in Subsection (b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.
- (b) In cases where the employing unit provides acceptable documentation to the board, the limitation in Subsection (a) may be exceeded if:
- (i) the member has transferred from another employing unit; or
 - (ii) the member has been promoted to a new position.
- (c) If the member retires more than six months from the date of termination of employment and for purposes of computing the member's final average salary only, the member is considered to have been in service at his last salary rate from the date of the termination of employment to the date retirement becomes effective if the member so requests.
- (8) "Normal retirement age" means the age of 65 years.
- (9) "Organization or agency financed in whole or in part by public funds" means an agency, association, or organization that receives public funds. The term does not include political subdivisions, departments, or educational institutions.
- (10) "Public funds" means those funds derived, either directly or indirectly, from public taxes or public revenue, dues, or contributions paid or donated by the membership of the organization used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.
- (11) (a) "Regular full-time employee," in qualifying for membership in the system, means an employee whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the employing unit.
- (b) "Regular full-time employee" includes a teacher who teaches half-time or more or a classified school employee who works an average of 20 hours per week or more, regardless of benefits provided.
- (12) "Years of service" or "service years" means:

(a) the number of periods, each to consist of 12 full months as determined by the board;

(b) a period determined by the board, whether consecutive or not, during which an employee performed services for an employer or employers, including any time the employee rendered service in the armed forces of the United States before membership in the system or was absent on a paid leave of absence granted by an employer or absent in the service of the United States government on military duty as provided by this chapter; or

(c) for a teacher, school administrator, or other contract employee of an educational institution, not less than eight months of full-time service constitutes a service year.

PART 2

THE SYSTEM AND FUND

49-3-201. Creation of system.

There is created for the employees of the state, its educational institutions, and its political subdivisions the "Public Employees' Noncontributory Retirement System." 1987

49-3-202. Creation of trust fund.

There is created the "Public Employees' Noncontributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system. The fund shall consist of all money paid into it in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source. Custody, management, and investment of the fund shall be governed by Title 49, Chapter 1. 1987

49-3-203. Eligibility for membership in the system.

(1) Any person entering full-time employment with the state or its educational institutions after the effective date of this chapter shall automatically become a member of the noncontributory retirement system.

(2) Any person in full-time employment with the state or its educational institutions prior to the effective date of this system may either become a member of this noncontributory system or remain a member of the Public Employees' Retirement System established under Title 49, Chapter 2, by following the procedures established by the board pursuant to this chapter.

(3) Membership in the noncontributory system is optional for political subdivisions, except that once a political subdivision elects to participate in the noncontributory system, that election is final and binding upon the political subdivision. Persons entering employment with political subdivisions which elect to participate in the noncontributory system after the effective date of this chapter shall automatically become members of the noncontributory retirement system. Any person in full-time employment with the political subdivision prior to that election to participate in this system may either become a member of the noncontributory retirement system or remain a member of the Public Employees' Retirement System established under Title 49, Chapter 2, by following the procedures established by the board pursuant to this chapter. 1987

49-3-204. Participation of political subdivisions -- Limitations -- Exclusions -- Organizations and agencies supported by public funds -- Admission requirements -- Withdrawal from system -- Full participation in system -- Exceptions -- Additional programs authorized -- Credit union withdrawal.

(1) All political subdivisions of the state, unless excluded under Subsection (2), are participating employers in the

system and may not withdraw from participation in the system. All departments and educational institutions are also participating employers in the system and may not withdraw from participation in the system. As participating employers, political subdivisions, departments, and educational institutions shall meet all requirements for full participation in the system.

(2) Any political subdivision not initially admitted or included as a participating employer in the system prior to January 1, 1982, may be excluded from participation in the system if the political subdivision elects not to provide or participate in any type of private or public retirement, supplemental or deferred income program, either directly or indirectly, for its employees, except for social security. Any excluded political subdivision may by resolution of its governing body apply for and receive admission to the system. Once admitted, the political subdivision may not withdraw from participation and shall meet all requirements for full participation in the system. If an excluded political subdivision elects at any time to provide or participate in any type of public or private retirement, supplemental or deferred income program, either directly or indirectly, except for social security, the political subdivision shall be required to be a participating employer in the system. As a participating employer, the political subdivision may not withdraw from participation and shall meet all requirements for full participation in the system.

(3) (a) Any organization or agency supported in whole or in part by state public funds, which prior to application is not covered by this chapter, may by resolution of its governing body apply for admission to the system. The board may refuse admission to any organization or agency applying for admission upon a finding that it is not in the best interest of the participating employers and employees.

(b) Upon approval of the board, the organization or agency shall become a participant in the system if the board and the organization or agency agree upon:

(i) the terms by which its employees shall become members of the system, such as the effective date of coverage;

(ii) the amount of prior service credit with which they may be credited, if any;

(iii) the amount of any contributions in addition to regular contributions that will be required to provide any prior service credits or retroactive current service credits from either the employing unit or its employees; and

(iv) the manner in which retroactive current or prior service credits may be established, if any.

(c) Once admitted to the system, an organization or agency may not withdraw from participation, except as provided in Subsection (4), and shall meet all requirements for full participation in the system.

(d) An organization or agency supported in whole or in part by public funds may not apply for or receive admission to the system after July 1, 1991.

(4) (a) An organization or agency admitted to the system pursuant to Subsection (3) which no longer receives public funds may withdraw from the system if:

(i) the organization or agency's governing body by resolution petitions the board for withdrawal from the system; and

(ii) the board approves the withdrawal.

(b) Once approval to withdraw is granted, the organization or agency and its employees shall be governed by Sections 49-1-502 and 49-1-503.

(5) Except as provided in Sections 49-3-206 and 49-3-207, no participating employer may maintain full participation in

the system by covering only part of its employees. The full participation requirement is satisfied if a participating employer covers those of its employees eligible for coverage under:

(a) Title 49, Chapter 4, Public Safety Retirement Act; or

(b) Title 49, Chapter 5, Firefighters' Retirement Act and its remaining employees under either Title 49, Chapter 2, Public Employees' Retirement Act or Title 49, Chapter 3, Public Employees' Noncontributory Retirement Act, whichever is applicable.

(6) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or deferred income program, either directly or indirectly, for their employees.

(7) (a) Credit unions which are participating units in any system administered by the board may withdraw from participation upon applying to the board. This application shall be made by December 31, 1987. The withdrawal is effective the day after the last day the withdrawing unit pays retirement contributions on its employees' salaries.

(b) Once the withdrawal of the credit union is complete, the employees of the withdrawing unit may apply to withdraw their vested contributions. Refunds shall then be paid in accordance with Subsection 49-1-502(3).

(c) Under no circumstance may a withdrawing unit receive the employer contributions which have been made to the system. 1992

49-3-205. Conversion to system — Time schedule.

The following laws govern conversion to the Public Employees' Noncontributory Retirement System:

(1) For persons governed by Subsection 49-3-203(2), the election to participate in the noncontributory system shall be made within six months of the effective date of this chapter.

(2) (a) For political subdivisions governed by Subsection 49-3-203(3), the election to participate as a local government unit shall be made within six months of the effective date of this chapter. The political subdivision shall indicate whether or not it elects to participate by enacting a resolution or ordinance to that effect. Prior to the enactment of the resolution or ordinance, a hearing shall be held by the political subdivision, at which all employees of the political subdivision shall be given an opportunity to be heard on the question of participating in this noncontributory retirement system. Notice of the hearing shall be mailed to all employees within 30 days of the hearing and shall contain the time, place, and purpose of the hearing.

(b) A person in full-time employment with a political subdivision prior to its election to participate has six months from the date the political subdivision elects to participate in which to elect to become a member of the noncontributory system.

(3) Subsections (1) and (2) shall be used to provide a second time period of conversion to this system beginning July 1, 1990.

(4) Subsections (1) and (2) shall be used to provide a third time period of conversion to this system beginning July 1, 1995. 1995

49-3-206. Exclusions from membership in system.

The following employees are excluded from membership in the retirement system:

(1) Every employee whose employment status is temporary in nature due to the nature or the type of work to be performed. If the term of employment exceeds six months, then for that employee a regular full-time status

shall be assumed, and the employee shall be enrolled in the system effective the beginning of the seventh month of employment. If the same employee, previously terminated prior to enrollment as a member, is again employed within three months of termination by the same employer, the employee shall be immediately enrolled as a member if the work constitutes full-time as defined in this chapter.

(2) Full-time students or the spouse of a full-time student and persons employed in a trainee relationship may be excluded from coverage by rules adopted by the board.

(3) Every current or future employee of a two-year or four-year college or university who holds, or is entitled to hold, pursuant to Section 49-2-206, a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company during any period in which that employee has received contributions toward the premiums required on compensation from the employing unit. The employee, upon cessation of the employer contributions, shall immediately become a contributing member.

(4) Every employee serving as an exchange employee from outside the state.

(5) Elected officials who file a formal request for exemption.

(6) Executive department heads of the state, senior executives employed by the governor's office, members of the State Tax Commission, the Public Service Commission, the State Olympic Officer, and other members of full-time or part-time boards or commissions who file a formal request to be excluded from coverage.

(7) (a) Employees of the Department of Employment Security who are covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act; or

(b) employees of the Department of Workforce Services who were covered under Subsection (7)(a) and who are covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

(8) Persons appointed as city managers or chief city administrators or other persons employed by a city, town, county, or other political subdivision, who are not entitled to merit or civil service protection. Persons eligible for exclusion under this subsection shall file a formal request for exclusion from coverage and be employed in a position designated as exempt under an employee exemption plan developed by the city, town, county, or political subdivision. Employee exemption plans shall be subject to the following limitations:

(a) The total number of positions a city, town, county, or political subdivision may exempt may not exceed the lesser of 30 positions or a number equal to 10% of the employees of the city, town, county, or political subdivision. However, every city, town, county, or political subdivision is entitled to a minimum exemption of one eligible employee.

(b) Employee exemption plans shall be filed annually with the retirement office, and the city, town, county, or political subdivision shall update the exemption plan in the event of any change.

(c) The retirement office may promulgate rules to implement this section.

1998

49-3-207. Higher education employees' eligibility requirements — Election between different retirement plans — Classification requirements — Transfer between systems — Supplemental plans authorized.

(1) The faculty members and employees of institutions of higher education who are eligible to participate in either this

system or in a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this subsection. The election is final, and no right exists to make any further election.

(2) A faculty member or employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification, and each institution of higher education is directed to prepare or amend existing employment classifications, under the direction of the Board of Regents, so that each classification is assigned either this system or with the Teacher's Insurance and Annuity Association of America or with any other public or private system, organization, or company designated by the Board of Regents.

(3) A faculty member or employee hired after January 1, 1979, whose employment classification requires participation in the state retirement system may, upon change to an employment classification which requires participation in an annuity plan with the Teacher's Insurance and Annuity Association of America or with some other public or private system, organization, or company designated by the Board of Regents, finally elect to continue participation in the state retirement system.

(4) A faculty member or employee hired after January 1, 1979, whose employment classification requires participation in such an annuity plan, upon change to an employment classification which requires participation in this system, shall participate in this system.

(5) Nothing contained in this section prohibits a faculty member or employee of an institution of higher education from participating in a supplemental annuity plan, and the Board of Regents shall promulgate rules governing permissible participation, but in no event may the contribution by an institution for the purchase of an old age annuity or other approved investment exceed 14.2% of the employee's or member's salary.

(6) The State Board of Education may assist its faculties and employees to purchase any old age annuity plan or other approved investment by promulgating rules governing permissible participation in a supplemental old age annuity plan or other approved investment, but such assistance is limited to contracting with the employee to receive a reduced salary, and investing the employee contribution towards the purchase of the annuity or other approved investment.

1987

PART 3

CONTRIBUTIONS

49-3-301. Contributions — Two levels — Report.

(1) The system shall be maintained on a financially and actuarially sound basis by means of contributions by the participating employer. For purposes of determining contribution rates, the system is divided into two levels according to participating employers. The levels are as follows:

(a) Level A includes the state of Utah, the Utah State Retirement Office, all participating educational institutions, and all other participating employers whose activities are associated with participating educational institutions.

(b) Level B includes all other participating employers in the system.

(2) The board shall report at least biennially to the governor, the Legislature, and each employing unit under Division A or B the contribution rates and any adjustments necessary

to maintain the system on a financially and actuarially sound basis, and the employer shall pay the certified contribution rates.

1992

49-3-302. Supplemental benefit established — Deferred compensation plan options — Contribution by employer and employee — Immediate vesting of contributions — Plans to be separate — Tax-qualified status of plans.

(1) There is established a supplemental deferred compensation benefit for members of this system.

(a) (i) For members of level A under Section 49-3-301, which are participating educational institutions or participating employers whose activities are associated with participating educational institutions, the employer shall contribute on behalf of each of its employees 1.5% of the employee's salary to a deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which is selected by the employee and which is sponsored by the board, by that level A employer, or by a group of similar level A employers and which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(ii) For all other members of level A under Section 49-3-301, the employer shall contribute on behalf of each of its employees 1.5% of the employee's salary to the deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the board.

(iii) The employee may also make elective contributions to either the qualified 401(k) plan which receives the 1.5% employer contribution described in Subsection (i), or to any other deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which is selected by the employee and sponsored by the board, that level A employer, or a group of similar level A employers, and which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986, but only up to an amount permitted by federal law.

(b) (i) For members of level B under Section 49-3-301, the participating employer may contribute on behalf of each of its employees any amount to the deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the board.

(ii) The employee may also contribute to the same qualified 401(k) plan which the employee selected to receive the employer contribution described in Subsection (i), but only up to an amount permitted by federal law.

(c) The employee may not make elective contributions to any other qualified 401(k) plan sponsored by a state or local government.

(2) The total amount contributed by the employer under Subsection (1)(a) or (b) vests to the employee's benefit immediately and is nonforfeitable.

(3) Each qualified deferred compensation 401(k) plan is separate and distinct from any other qualified deferred compensation 401(k) plan, for all purposes including, but not limited to, purposes of fiduciary liability and plan administration. The board may request from any other qualified 401(k) plan under Subsection (1)(a)(iii) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code and may request indemnification from such other plan to the extent it performs testing functions for that plan.

(4) Prior to January 1 of each calendar year, each employee of an employing unit specified in Subsection (1)(a)(i) shall notify the employing unit which qualified deferred compensa-

tion 401(k) plan the employee has selected to receive the employer and employee contributions described in Subsections (1)(a) and (b) for that calendar year. This election may be changed only in accordance with procedures established by the employing unit. Notwithstanding this section, the board may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) deferred compensation plan pursuant to federal law. The board shall submit findings of fact and its conclusions prior to taking any such action.

1992

PART 4

BENEFITS

49-3-401. Eligibility for service retirement — Date of retirement — Qualifications.

(1) (a) Any member who qualifies for service retirement may retire by applying in writing to the retirement office stating the proposed effective date of retirement, which may not be more than 90 days before or after the date of application.

(b) The effective date shall be the 1st or 16th day of the month, as selected by the member, but must be after the last day of actual work.

(c) The member shall actually terminate employment and provide evidence of termination.

(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:

(a) the member has been credited with at least four years of service and has attained an age of 65 years or more;

(b) the member has been credited with at least ten years of service and has attained an age of 62 years or more;

(c) the member has been credited with at least 20 years of service and has attained an age of 60 years or more;

(d) the member has been credited with at least 30 years of service; or

(e) the member is credited with at least 25 years of service, in which case the member shall be subject to the reduction set out under Subsection 49-3-402(2)(b).

1996

49-3-402. Service retirement plans — Calculation of retirement benefit — Social Security limitations — Board authority to adjust formula — Computation of benefits for segments of service.

(1) There are six service retirement plans available to members of the system. Plan One is as follows, with Plans Two, Three, Four, Five, and Six established under Section 49-3-403.

(2) Except for members of this system who meet the requirements of Section 49-3-802, upon the service retirement of a member under Section 49-3-401, the member shall receive a retirement allowance consisting of a pension based on service determined as follows:

(a) If the member has attained the age of 65 years, the retirement allowance is an amount equal to 2% of the final average monthly salary multiplied by the number of years of service credited to the member.

(b) If the member is less than 65 years old, the retirement allowance shall be reduced 3% for each year of retirement from age 60 to age 65, plus a full actuarial reduction for each year of retirement prior to age 60, unless the member has 30 or more years of credit, in which event no reduction is made to the allowance.

(3) Years of service include any fractions of years of service to which the member may be entitled. Service amounting to

9/10 of one year constitutes a year of service credit in the computation of a retirement benefit.

(4) (a) The final average salary is limited in the computation of that part of a member's prior service retirement allowance based on service rendered during a period when the member received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company to \$4,800. This limitation is not applicable to members who elected to continue in the state retirement system by July 1, 1967.

(b) Periods of service which are exempt from this system as permitted under Subsection 49-3-206(3), not to exceed four years, may be purchased by the member for the purpose of retirement. 1996

49-3-403. Service retirement plans — Additional options — Death of member within 90 days after retirement.

(1) A member at the time of retirement may as an option select a modification of retirement Plan One under Section 49-3-402 for a member taking service retirement and have the service retirement allowance reduced and in lieu thereof accept an actuarially equivalent reduced retirement allowance and an accordingly reduced retirement allowance payable throughout the member's life as follows:

Plan Two. In the case of a member with accumulated contributions from the Public Employees' Retirement System under Title 49, Chapter 2, if the member dies before receiving in lesser annuity payments the amount of the member's accumulated contributions at retirement, the balance of the accumulated contributions shall be paid to the member's estate or to any person the member nominates by written designation duly executed and filed with the retirement office.

Plan Three. Upon the member's death, an allowance equal to the member's reduced retirement allowance to be paid to and throughout the lifetime of the lawful spouse at the time of retirement.

Plan Four. Upon the member's death, an allowance equal to one-half of the member's actuarially equivalent reduced retirement allowance to be paid to and throughout the lifetime of the lawful spouse at the time of retirement.

Plan Five. A member may further modify Plan Three by accepting a retirement allowance actuarially reduced so that if the lawful spouse predeceases the member, a retirement allowance, equivalent to the amount payable at the time of initial retirement under Plan One, as set out under Section 49-3-402, shall be paid to the member for the remainder of the member's life, beginning on the last day of the month following the month in which the lawful spouse dies.

Plan Six. A member may further modify Plan Four by accepting a retirement allowance actuarially reduced so that if the lawful spouse predeceases the member, a retirement allowance, equivalent to the amount payable at the time of initial retirement under Plan One, as set out under Section 49-3-402, shall be paid to the member for the remainder of the member's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(2) (a) If a retirant under Plan One dies within 90 days after the effective date of retirement, the retirement is void and the death shall be considered as that of a member before retirement.

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

(c) If a member retires under either Plan Five or Six and subsequently divorces, the retiree may elect to convert the present value of the remaining benefit at the time of divorce to an actuarially equivalent benefit under Plan One, if there is no court order to the contrary. 1994

49-3-404. Settlement of benefit claims by lump sum payment — Circumstances where allowed.

If a retiring member's monthly allowance, as computed under Section 49-3-402, amounts to \$25 or less, the benefit claim may be settled by the administrator by making a lump-sum payment of an amount actuarially equivalent to the monthly allowance. Payment thus made constitutes a full and complete settlement of the retiring member's claim against the system. 1987

49-3-405. Lump-sum death benefit — Cancellation of benefit — Rules authorized to prevent adverse selection of benefits.

(1) (a) A member, upon retirement, may elect to have the administrator set aside in reserve from the member's retirement allowance a sufficient sum of money, based upon age, sex, interest rate in effect, and the mortality rates for the member's group, to provide a lump-sum benefit payable to a beneficiary upon the death of the member after retirement, under an agreement that will provide a reduced retirement allowance payable to the retirant throughout the retirant's lifetime, plus the lump-sum amount at death.

(b) The lump-sum death benefit may be purchased in accordance with rules adopted by the board.

(c) The spouse of a retiring member may also be covered with a death benefit upon the request of the member.

(2) The lump-sum death benefit provided by this section may be chosen as a modification of or deduction from the retirement allowance provided under Section 49-3-402 or 49-3-403, and is payable to the designated beneficiary chosen at the time of the member's retirement, to a beneficiary subsequently designated, or to the retirant's estate under applicable conditions established under Section 49-1-606 or 49-1-607.

(3) If a retirant cancels retirement as permitted by this title, the lump-sum death benefit under this section shall also be canceled, with the appropriate reserve, as determined by the administrator, credited back to the member's contribution account.

(4) Payment of the lump-sum death benefit consists only of a refund of the retirant's reserve or the amount determined by the board and set aside as provided in this section if death occurs within three years from the date of retirement and is due to a health condition existing and being treated at the time of retirement.

(5) The board may establish rules and adopt suitable mortality rates to protect the fund against adverse selection of benefits by a retiring member under this section. 1995

49-3-406. Death of married members — Service retirement benefits to surviving spouse.

(1) As used in this section, "member's full allowance" means the benefit calculated using the formula under Subsection 49-3-402(2)(a) without an actuarial reduction.

(2) (a) Beginning January 1, 1997, a member who has 15 or more years of credited service, age 60 with 20 or more years of credited service, age 62 with ten or more years of credited service, or age 65 with four or more years of credited service, respectively, and who dies leaving a spouse to whom the member has been married at least six months prior to the death date, may, upon the request of the spouse, be considered to have retired on the first day of the month following the month in which death occurred and retired under Plan Three.

(b) The spouse who requests a benefit pursuant to Subsection (2)(a) shall apply in writing to the retirement office stating the proposed effective date to begin receiving a monthly retirement allowance, which may not be more than 90 days before or after the date of application, and

which shall be effective on the 1st or 16th day of the month, as selected by the spouse.

(3) The retirement benefit payable to a surviving spouse under Subsection (2) is:

(a) if the member has 25 or more years of credited service at the time of death, the surviving spouse shall receive the member's full allowance;

(b) if the member has between 20-24 years of credited service and is not age 60 or older at the time of death, the surviving spouse shall receive two-thirds of the member's full allowance;

(c) if the member has between 15-19 years of credited service and is not age 62 or older at the time of death, the surviving spouse shall receive one-third of the member's full allowance; or

(d) if the member is age 60 or older with 20 or more years of credited service, age 62 or older with 10 or more years of credited service, or age 65 or older with four or more years of credited service at the time of death, the surviving spouse shall receive the benefit calculated using the formula and the actuarial reduction under Subsections 49-3-402(2)(a) and (2)(b).

(4) Benefits payable under this section are service retirement benefits and shall be paid in addition to any other payments made under Section 49-3-701, except for a return of accumulated contributions, and shall constitute a full and final settlement of the claim of the spouse or any other beneficiary filing a claim for benefits under Section 49-3-701.

1998

49-3-407, 49-3-408. Repealed.

1990, 1996

49-3-409. Part-time elective or appointive service — Computation of allowance.

Elective or appointive service rendered on a basis not considered full time by the board, unless otherwise provided by this chapter, shall have a retirement allowance computed on the basis of compensation actually received by the official during the period.

1987

49-3-410. Purchase of retirement credit — Conditions — Cost.

(1) Any member of this system may receive retirement service credit in accordance with Subsection (2).

(2) (a) A member may purchase or a member and an employing unit may jointly purchase a combined maximum total of five years of retirement service credit which is not otherwise purchasable under this chapter.

(b) The number of years of retirement service credit purchased may not exceed the number of years required by the member to retire with no actuarial reduction.

(c) The purchase of retirement service credit must allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.

(d) The member must retire effective immediately after the purchase of retirement service credit is made.

(e) The member shall pay at least 5% of the cost of the purchase.

(3) The purchase price for the retirement service credit shall be calculated and paid for as provided in Section 49-1-407.

(4) (a) The employing unit may elect to purchase retirement service credit for a member under Subsection (2) while the member is on an unpaid leave of absence.

(b) If the member is on an unpaid leave of absence, the employing unit may make installment payments towards the purchase in amounts fixed by the administrator.

(c) The member shall retire when the purchase obligations are fulfilled.

(5) A member who retires after the employer purchases retirement service credit under this section may not be reemployed by the employing unit from which the member retired.

(6) Prior to making any purchase of service credit under this section, an employing unit shall adopt a purchase policy that includes nondiscriminatory participation standards for all employees.

1996

PART 5

DISABILITY

49-3-501. Disability coverage.

Members of this system are covered under Title 49, Chapter 9, the Public Employees' Disability Act.

1987

49-3-502. Repealed.

1980

PART 6

BENEFIT ADJUSTMENTS

49-3-601. Cost-of-living allowance — Part of retiree's allowance — Limitations.

(1) There shall be computed and paid by the retirement office, upon the approval of the board, an annual cost-of-living allowance adjustment to all retired members of this system after the members have been retired one year. The adjustment shall be equal to the decrease in the purchasing power of the dollar during the preceding year, as measured by the Consumer Price Index, prepared by the United States Bureau of Labor Statistics, limited to a maximum of 4% of the retirants' or beneficiaries' original retirement allowance. Decreases in the purchasing power of the dollar in excess of 4% annually shall be accumulated and used in subsequent allowances when the cost-of-living adjustment is less than 4% annually.

(2) If the cost-of-living shows a decline of 4% or more during any period of time extending longer than one year, a reduction not to exceed the rate of 2% per year shall be made based upon the original retirement allowance. Payments made under this section shall be a part of the retired member's allowance. The payments and subsequent adjustments as prescribed for the retirant shall likewise apply to the beneficiary who is paid an allowance under optional retirement plans.

1987

PART 7

DEATH BENEFITS

49-3-701. Death benefit by means of group insurance policy — Proof of death requirements — Calculation of death benefit — Administration by board — Active and inactive member benefits — Payment of claim — State Tax Commission to provide information on dependents — Exclusion.

(1) The board shall provide a death benefit through the purchase of a group insurance policy for members of this system. The board shall make rules to implement and administer the death benefit provided by this section and may, in accordance with federal law, establish:

(a) benefit levels or classes of employees; and

(b) a living benefit option.

(2) Upon receipt of acceptable proof of death of a member of the system, either prior to the effective date of the member's retirement, except as provided in Section 49-3-406, or after the date of retirement but under circumstances that Section 49-3-403 requires to be treated as the death of the member before retirement, the following death benefits, except those benefits already provided to the member under a living benefit option, shall be paid to the beneficiary:

(a) the return of any accumulated contributions under this chapter; plus

(b) a percentage of the final average salary of the deceased member to be determined by the board. This percentage shall be the highest percentage of final average salary obtainable by the board through the purchase of a group insurance policy using the money contributed by the employer under Subsection (3).

(3) The cost of the death benefit shall be paid by the employer.

(4) The portion of the death benefit provided under Subsection (2)(b), based upon the member's past compensation, may not be paid to the beneficiary of an inactive member unless:

(a) that member has credit for ten or more years of service prior to July 1, 1987; or

(b) the death of the member occurs either:

(i) within a period of 120 days after the last day of service for which the person received compensation;

(ii) while the person is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of service for which compensation is received; or

(iii) that person is on military leave and has elected to remain in active contributing membership status as provided in Section 49-1-402.

(5) The death benefit may not be paid to any person except a beneficiary.

(6) The death benefit for an inactive member, except as otherwise provided under Subsection (4), is a return of the deceased member's accumulated contributions.

(7) Payment of the death benefit by the retirement office constitutes a full settlement of any beneficiary's claim against the system, and the system is not liable for any further or additional claims or assessments on behalf of the deceased member.

(8) Unless otherwise specified in a written document filed in the retirement office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Uniform Probate Code.

(9) In the implementation of this section and for administrative purposes only, the State Tax Commission shall provide pertinent information to the retirement administrator, upon request, concerning dependents claimed by a deceased member on the income tax return covering the year prior to the member's death.

(10) A death benefit may not be paid to a member who has retired under this system.

1994

49-3-702. Closing the retirement account — Status of retirants and beneficiaries.

(1) A retirant, or beneficiary if retirement allowance payments are being made under Plan Three, Four, Five, or Six, who is alive on the first day of the month and dies during the month is considered to have lived through the month for purposes of closing the retirement account.

(2) If more than one year has elapsed since the death of a retired member whose designated beneficiary is deceased and whose account payable to the beneficiary amounts to \$100 or less, the account shall be closed and no further payment may be made.

1987

PART 8

MISCELLANEOUS

49-3-801. Repealed.

1989

49-3-802. Early retirement incentive — Eligibility for this early retirement plan — Calculation of benefit — Payment of costs of early retirement incentive — Savings to be appropriated by Legislature — Restrictions on reemployment.

(1) Any member of this system may retire and receive the benefit allowed under Subsection (2) if the member meets the following requirements as of the effective date of retirement:

(a) the member is eligible for retirement under Section 49-3-401, or otherwise has 25 years of service credit;

(b) the member elects to forfeit any stipend for retirement offered by the employing unit; and

(c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3)(a) or (3)(b).

(2) A member who retires pursuant to Subsection (1) shall receive 2% of that member's final average salary for all years of service credit. No actuarial reduction may be applied to the benefit granted under this section.

(3) In order to receive the benefit allowed by this section, a member shall submit an application to the retirement office as follows:

(a) For state and school employees under level A, the application shall be filed by May 31, 1987. The effective date of retirement shall then be set by the employee on the 1st or 16th day of July, August, or September, 1987. If a level A employee elects to retire, the administrator or employer may request the employee to delay the effective date of retirement until a later date, but no later than June 30, 1988. If the employee agrees to delay the effective retirement date, the effective date shall be delayed, but no service credit may be accrued after the original effective date of retirement elected by the employee, and no salary earned after that effective date may be used in the calculation of the final average salary for determining the retirement benefit.

(b) For political subdivisions under level B, the application shall be filed by September 30, 1987. The effective date of retirement shall then be set by the employee on the 1st or 16th day of July, August, September, October, November, or December, 1987.

(4) (a) The cost of providing the benefit under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary and approved by the board.

(b) The cost of providing the benefit under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.

(c) The rate increase under Subsections (a) and (b) shall be funded:

(i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection (d), which is funded by savings derived from this early retirement incentive and a work force reduction;

(ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in Title 53A, Chapter 17a, Minimum School Program Act; and

(iii) for political subdivisions under level B, by direct contributions by the employing unit.

(d) (i) Each year, any excess savings derived from this early retirement incentive which are above the costs of funding the increase and the costs of paying

insurance, sick leave, compensatory leave, and vacation leave under Subsections (c)(i) and (c)(ii) shall be reported to the Legislature and shall be appropriated as provided by law.

(ii) In the case of Subsection (c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.

(iii) In the case of Subsection (c)(ii), the State Office of Education shall certify the amount of savings derived from this early retirement incentive.

(iv) The State Office of Education and the employing unit may not spend the savings until appropriated by the Legislature as provided by law.

(5) A member who retires under this section is subject to Section 49-1-505.

(6) The retirement board may adopt rules to implement and administer this section.

(7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

1993

CHAPTER 4

PUBLIC SAFETY RETIREMENT ACT

Part 1

General Provisions

Section	
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Part 8

Miscellaneous [Repealed]

49-4-801.	Repealed.
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PART 1

GENERAL PROVISIONS

49-4-101. Short title.

This chapter is known as the "Public Safety Retirement Act."

1987

49-4-102. Purpose.

The purpose of this chapter is to establish a retirement system for public safety employees which provides the following:

- (1) a uniform system of membership;
- (2) retirement requirements;
- (3) benefits for public safety employees;
- (4) funding on an actuarially sound basis;
- (5) contributions by employers and employees; and
- (6) economy and efficiency in public service.

1987

49-4-103. Definitions.

As used in this chapter:

- (1) (a) "Compensation," "salary," or "wages" means the total amount of payments which are currently includable in gross income made by an employer to an employee covered under the retirement system for services rendered to the employer as base income. Base income shall be determined prior to any salary deductions or reductions for any salary deferral or pretax benefit programs authorized by federal law.

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

(c) "Compensation" does not include:

- (i) overtime;
- (ii) sick pay incentives;
- (iii) retirement pay incentives;
- (iv) the monetary value of remuneration paid in kind, such as a residence, use of equipment or uniform or travel allowances;
- (v) a lump-sum payment or special payments covering accumulated leave; and
- (vi) all contributions made by an employer under this plan or under any other employee benefit plan maintained by an employer for the benefit of a participant.