

2016

Neal K. Ostler, Appellants/Plaintiffs, vs. Utah State Retirement Board, Appellees/Defendants.

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

NEAL K. OSTLER,

APPELLANTS/PLAINTIFFS,

vs.

UTAH STATE RETIREMENT BOARD,

APPELLEES/DEFENDANTS.

BRIEF OF APPELLANTS

Appellate Case No. 20160220-CA

BRIEF OF APPELLANTS

Appeal from the Utah State Retirement Board, Salt Lake County
File No. 13-25R

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PARTIES

1. Neal K. Ostler, an individual.
2. Utah State Retirement Board, a component unit of the State of Utah.
3. Salt Lake Community College, a State of Utah institution of higher education.

STATEMENT OF APPELLATE JURISDICTION

This Court has jurisdiction pursuant to Utah Code Ann. § 63G-4-403, § 49-11-613(7), and § 78A-4-103(2), which confers jurisdiction to review appeals resulting from the final orders of formal adjudicative proceedings of state agencies. This case involves the timely appeal of Neal K. Ostler (“**Ostler**”) from a final order issued by the Utah State Retirement Board (the “**Board**”) on February 18, 2016. The final order was styled as *Undisputed Fact, Conclusions of Law, and Order* (hereinafter the “**Board’s Decision**” or “**Final Order**”).

STATEMENT OF ISSUES AND STANDARDS OF REVIEW

Issue No. 1: Did the Board misinterpret Utah Code Ann. §§ 49-11-501 and 502 when it determined that Ostler forfeited all of his service credits, and therefore was not entitled to any retirement benefits, because he did not re-deposit his member share of his retirement contributions?

The Board’s “application or interpretation of a statute” is a question of law, which is reviewed “under the correction-of-error standard.” *Whitaker v. Utah State Ret. Bd.*, 2008 UT App 282, ¶ 10, 191 P.3d 814. The Court will grant relief only if Ostler was “substantially prejudiced” by the Board’s erroneous interpretation of the law. *See Id.*

Issue No. 2: Did the Board erroneously apply Utah law when it determined Ostler's claim against Salt Lake Community College was barred by the statute of limitations?

Whether the "appropriate statute of limitations period" is correctly applied is a legal question, which is reviewed for correctness. *Utah Dep't of Envtl. Quality v. Redd*, 2002 UT 50, ¶ 12, 48 P.3d 230.

Alternatively, did the Board correctly apply the doctrine of laches in granting summary judgment in favor of Salt Lake Community College?

The application of the doctrine of laches is a question of fact which is reviewed for abuse of discretion. *See, e.g., Papanikolas Bros. Enterprises v. Sugar House Shopping Center Associates*, 535 P.2d 1256, 1260 (Utah 1975).

IMPORTANT STATUTES AND RULES

As a supplement to Plaintiffs' Addendum, copies of the following rules and statutes are included in the Addenda attached hereto:

- A. Utah Constitution, Article I, Section 22.
- B. A copy of the Utah State Retirement and Insurance Benefit Act, Utah Code §§ 49-11-101, *et seq.*
- C. A copy of the Board's Decision.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

The Utah State Retirement Systems (the "URS") denied Ostler's claim for pension benefits, which he is owed for service credits earned while he was employed with various

Utah governmental agencies. The URS determined Ostler is not entitled to pension benefits under the Safety Contributory Retirement System (“**Safety System**”), codified at Title 49, Chapter 14 of the Act, because he allegedly forfeited all of his service credits when he took a refund of his member contributions prior to retirement. The URS also determined that Ostler was not entitled to pension benefits under the Noncontributory Retirement System (“**Public System**”), codified at Title 49, Chapter 13 of the Act, because he did not earn the requisite four years of service credits. However, had the Salt Lake Community College (“**SLCC**”) made the required contributions on Ostler’s behalf, he would have had more than four years of service credits under the Public System, and would be entitled to pension benefits under the Public System.

II. COURSE OF PROCEEDINGS AND DISPOSITION IN AGENCY ACTION

1. In or about July 2013, URS denied Ostler’s request to retire under the Safety System and the Public System. [R.000073] Ostler timely appealed to the Board, which appointed Adjudicative Hearing Officer Frank G. Noel (the “**Hearing Officer**”) to conduct an evidentiary hearing and make Recommended Findings of Fact, Conclusions of Law and Order. [R.000001]

2. On March 31, 2014, Ostler filed a motion for reconsideration requiring SLCC be joined as a party. [R.000283] SLCC resisted Ostler’s motion, arguing that because the Third Judicial District Court of Salt Lake County dismissed his claim for pension benefits, Ostler’s motion should be denied on the grounds of res judicata and collateral estoppel. [R.000388] The Hearing Officer properly determined that the Third Judicial District Court did not have jurisdiction to determine whether Ostler was entitled

to URS pension benefits pursuant to *Ramsey v. Kane County Human Resource Special Service District*, 2014 UT 5, 322 P.3d 1163. [R.000400]

3. Shortly after the Hearing Officer granted Ostler's motion for reconsideration, on July 22, 2014, SLCC filed a motion for summary judgment seeking to be dismissed from the matter under the theory that Ostler's claims against it was barred by the statute of limitations. [R.000404] The Hearing Officer issued an Order Granting SLCC's Motion for Summary Judgment on September 30, 2014. [R.000546] Ostler was therefore precluded from undertaking any discovery of SLCC's personnel records or policies governing URS benefits.

4. On October 15, 2015, Ostler filed a motion for summary judgment and claimed that, as a matter of law, he is entitled to his vested pension benefits based on his participating employer's contributions in the Safety System. [R.000599] On November 5, 2015, the URS filed a cross motion for summary judgment wherein it opposed Ostler's motion for summary judgment and claimed that, as a matter of law, Ostler is not entitled to pension benefits because he received a refund of his member contributions. [R.000646] A hearing was held on the matter on December 17, 2015. [R.000754] The Hearing Officer issued his Decision on February 9, 2016, and denied Ostler's motion for summary judgment and granted the Board's. [R.000721]

5. On February 9, 2016, the Board issued the Final Order wherein it determined that all claims brought by Ostler had been considered and dismissed and it incorporated the Order Granting SLCC's Motion for Summary Judgment. [R.000733]

III. STATEMENT OF FACTS

Ostler earned service credits in the Safety System while he was employed with the Salt Lake County Sheriff's Office and the Department of Corrections. [R.000725] Under the Safety System, he earned 14.906 years of service credits from the Sheriff's Office and 0.261 years of service credits from the Department of Corrections, for a combined total of 15.167 service credits. [R.000726]

Under the Public System, Ostler earned service credits while employed with the Department of Commerce, Davis Applied Technology, and Salt Lake City Corporation. He earned 1.23 years of service credits from Davis Applied Technology and 0.161 years of service credits from Salt Lake City Corporation. [R.000726]

In or around 1991, Ostler withdrew approximately \$27,000 of his member share of retirement contributions (the "**Refund**") from the Safety System. [R.000727] Ostler did not re-deposit the Refund. [R.000727] The Board provides that Employer Contributions are held in the Public Employees' Contributory Retirement Trust Fund and the Public Safety Contributory Trust Fund (collectively, the "**Trust Funds**"). [R.000727] The Non-Elective Employer Contributions are held in the Public Employee's Noncontributory Retirement Trust Fund. [R.000727] Member Contributions are kept separate from Employer Contributions and the Non-Elective Employer Contributions and are credited by the Office to the account of the individual member. [R.000727] Despite the separation of employer contributions and member contributions, the Board contends that an employee forfeits all of his service credits, and therefore, not entitled to his retirement

allowance, if he receives a refund of his member contributions and fails to re-deposit all of the funds prior to applying for retirement. [R.000729]

From 1992 through 1998, Ostler was employed by SLCC and regularly worked more than 20 hours a week. [R.000488, R.000553] SLCC participates in the Public System. [R.000488] SLCC had a policy at the time of Ostler's employment that any employee who worked more than 20 hours a week qualified to participate in the Public System—which is non-contributory. [R.000488] SLCC did not make contributions to the Public System on Ostler's behalf, notwithstanding Ostler having worked more than the minimum required hours. [R.000489] The Board dismissed Ostler's claims regarding the missed contributions based on its determination that a 3-year statute of limitation period began to run when SLCC missed the contributions, not when Ostler applied for retirement benefits. [R.000548-R.000549]

Ostler filed suit in 1999, in the Third Judicial District Court, seeking, among other things, his pension benefits from SLCC. Ostler's claim was dismissed. The URS Hearing Officer determined – some 14 years later – that the Third Judicial District Court lacked jurisdiction to determine whether Ostler was entitled to URS benefits based on missed SLCC contributions.

Ostler applied for a retirement allowance in or about April 2013. [R.000073] The URS denied his application on the basis that he did not have any service credits after he took the Refund in 1991. [R.000073]

IV. SUMMARY OF ARGUMENT

The Utah Legislature adopted the Utah State Retirement and Insurance Benefit Act (the “Act”), “in order to provide a comprehensive system of retirement and health insurance benefits to state and local public employees throughout the State of Utah.” *Ramsay v. Kane Cty. Human Res. Special Serv. Dist.*, 2014 UT 5, ¶ 2, 322 P.3d 1163. Ostler was a public employee who worked for several employers that provided retirement benefits under the Act. For more than 15 years, he and his employers contributed to the Safety System. In 1991, Oster received the Refund. His employers’ contributions, however, remain in the Safety System. Ostler’s application for retirement benefits was denied by the Board under the theory that Ostler forfeited all of his service credits when he took the Refund.

The Board erred when it interpreted Utah Code Ann. §§ 49-11-501 and 502 to mean that a refund of any member contribution results in the loss of all retirement benefits. A plain reading of the Act provides that retirement benefits should be reduced, not eliminated when a member takes a refund of member contributions because the member only forfeits service credits based on the amount of the member contribution refund.

Additionally, the Board erred when it determined Ostler’s claims against SLCC is barred by the statute of limitations. The Board claims that the clock began to tick when Ostler learned that SLCC failed to make contributions on his behalf in the 1990’s when, in fact, the clock should have begun when he applied for retirement in 2013. Ostler attempted to seek relief from the Third Judicial District Court in 1999. It was not until 15

years later that the URS Hearing Officer determined that the District Court lacked jurisdiction.

ARGUMENT

A. The Board Erred When It Determined Ostler Was Not Entitled to Pension Benefits

1. The Plain Language of the Act Clearly Shows a Member is Entitled to Employer's Contributions Even if the Member Takes a Refund

The Board's erroneous interpretation of Utah Code Ann. §§ 49-11-501 and 502 has substantially prejudiced Ostler because it resulted in the elimination of his pension benefits. Under the Board's interpretation, a member forfeits all service credits – and therefore, all employer contributions made on his behalf – if the member receives a refund of any member contributions. The plain language of the Act does not support this interpretation. Rather, the member should only forfeit service credits equal to the amount of the refund and should still be entitled to a retirement allowance based on the contributions that remain in the system – whether it be member and employer contributions or employer contributions only.

Under the rules of statutory construction, the court first looks “to the statute’s plain language to determine its meaning.” *Sindt v. Ret. Bd.*, 2007 UT 16, ¶ 8, 157 P.3d 797. There is a presumption “that the terms of a statute are used advisedly by the legislature.” *Id.* “Therefore, effect should be given to each such word, phrase, clause, and sentence where reasonably possible.” *Id.* (citing *Chris & Dick's Lumber & Hardware v. Tax Comm'n*, 791 P.2d 511, 516 (Utah 1990) (Howe, J., dissenting)). To determine the meaning of the plain language, the court examines “the statute in harmony with other

statutes in the same chapter and related chapters.” *McLeod v. Ret. Bd.*, 2011 UT App 190, ¶ 12, 257 P.3d 1090 (internal quotation marks omitted). Further, the Act is to be liberally construed to “provide maximum benefits and protections consistent with sound fiduciary and actuarial principals.” Utah Code Ann. § 49-11-103.

While the Board’s interpretation of the Act is generally entitled to deference, the discretion granted by the legislature is limited. *Sindt*, 2007 UT 16, ¶ 5. According to the Utah Supreme Court, the Board has discretion only if it “provides written documentation which demonstrates that the interpretation or definition promotes uniformity in the administration of the systems or maintains the actuarial soundness of the systems, plans or programs.” *Id.* In addition, “courts will grant deference only if the Board’s interpretation or definition is plausible and consistent with the plain language of the statute.” *Id.* Here, the Board did not provide any competent evidence or written documentation in the record or during the hearing below regarding uniformity or actuarial soundness as required in *Sindt*. As such, the Board’s interpretation of the Act is not entitled to any deference in these appellate proceedings.

In order to qualify for a retirement allowance, a member must be at least 65 years old and have accrued at least four years of service credits. Utah Code Ann. § 49-13-401. The Board misconstrued the definition of “service credit” and “contribution” when it held that Ostler is not entitled to a retirement allowance. A “service credit” accrues when a person is “employed and compensated by a participating employer” and “meets the eligibility requirements for membership in a system . . . provided all required contributions are paid to the office.” § 49-11-401(3). A contribution is defined as “the

total amount paid by the participating employer and the member into the system.” § 49-11-102(15). The Board misconstrued “contribution” to mean that both member and employer contributions are required to earn a service credit in the first place and the service credit is not “earned” if the member takes a refund at a later date—even though the service credit had previously been earned. Under this construction, however, a member of a non-contributory system (where no member contributions are made) would never earn service credits because the member does not make contributions. That construction is not the intent of the Legislature, nor how it is construed by the Board in some context, but not in others. Ostler and his employers contributed to the Safety System over a 15 year period. Therefore, he earned 15 service credits. There is no question that his employers’ contributions remain in the Trust Fund.

Section 501 provides that if a member of the Utah State Retirement system terminates employment with a participating employer for any reason (other than retirement, disability, or death), the member may leave his retirement contributions in the fund or “may receive a refund of the member contributions as provided *under this section*.” Utah Code Ann § 49-11-501(1). (emphasis added). A “member who receives a refund of *member contributions* forfeits the service credit *based on those contributions*.” *Id.* at ¶ (5) (emphasis added). If a members receives a refund, and redeposits the refund as provided in § 49-11-502 prior to his retirement date, the “service credit shall be restored to the member’s account and credited to the same system ... from which the refund was taken.” *Id.* at ¶ (1)(c). However, if a “total redeposit is not made prior to the member’s retirement date ... the member is not entitled to service credit *based on the*

amount of the refund.” *Id.* at ¶ (2)(b) (emphasis added). It is clear from these provisions that the Board’s interpretation is not supported by the Act.

The Board’s interpretation is unreasonable because the Act does not say a member loses all rights to a retirement allowance if he takes a refund and fails to re-deposit the entire amount. Section 501 provides that a member forfeits service credits *based on member contributions*. Section 502 further provides that a “member is not entitled to service credits *based on the amount of the refund.*” In other words, the contributions and the amount of the refund must be taken into account. There is no construction by which the forfeiture language of Sections 501 and 502, read together with the definitions of “service credit” and “contribution”, can be construed to negate the Legislature’s carefully chosen words that forfeiture is based on “*those contributions*” (*i.e.*, member contribution) and that failure to redeposit “*those contributions*” results in the member not receiving “service credit based on the *amount* of the refund.”

In addition, the Board’s construction of the Act creates a gross injustice to similarly situated individuals. For example, if a member takes a \$1000 refund of his member contributions, has 15 years of service credits, but fails to repay the \$1000 prior to retirement, he would forfeit his right to retirement benefits—just as a member who took a \$100,000 refund. Such an uneven application of the Act is inconsistent with the Legislature’s mandate that the Act be “liberally construed to provide maximum benefits,” Utah Code Ann. § 49-11-103(2). The only construction that avoids treating similarly situated individuals differently, is interpreting and reading the plain words of Sections

501 and 502 to mean that forfeiture only applies to the “amount” of “those contributions.”

The employer contributions made on Ostler’s behalf remain in the Trust Fund and the Board should not be able to retain the contributions – that were part of Ostler’s compensation package – based on its erroneous interpretation of the statute. Under the current framework, when a member takes a refund, the employer contributions remain in the Public Safety Contribution Trust Fund. Member and employer contributions are kept in separate accounts. There is no question that employer contributions are still available and could be used to make a retirement allowance. Instead, the contributions are used in actuarial assumptions and calculations to determine the rates and benefits for other members. For every member who forfeits his service credits under the Board’s erroneous interpretation, the required employer and member contributions are thereby reduced. Thus, creating a windfall for employers and other members of the system at the former employees’ expense.

Additionally, the Board’s argument that its interpretation of Sections 501 and 502 is consistent with actuarial soundness is unpersuasive. The Board is responsible to instruct its actuaries to provide funding models based on plan terms. The fact that the Board misconstrued the Act and instructed its actuaries to calculate required contribution amounts based on forfeited employer contributions, which should not have been forfeited in the first place, should have no bearing on whether Ostler is entitled to his employer’s contributions. Ostler should not be harmed because of the Board’s misinterpretation of the Act.

The Board erroneous interpretation has also resulted in an unlawful taking under Article I, Section 22 of the Utah Constitution, which provides “[p]rivate property shall not be taken or damaged for public use without just compensation.” Ostler’s compensation package was comprised of wages and benefits. His employer’s contributions to his retirement account was an important benefit, which he earned over 15+ years of public service. The Board has taken his property without just compensation. The Board is also taking it for public use because his employer contributions are being used in actuarial assumptions to decrease required contributions for other members and governmental employers.

When the Act is read and each “word, phrase, clause, and sentence” is given effect, it is clear that a member who receives a refund is still entitled to employer contributions made on his behalf. The member’s retirement allowance should be reduced, but not eliminated. The Board erred when it misinterpreted Sections 501 and 502. Therefore, Ostler should be entitled to a retirement allowance based on his employer’s contributions that remain in the system.

2. Alternatively, the Act is Ambiguous and it Should be Interpreted to Maximize Benefits

In the alternative, Utah Code Ann. §§ 49-11-501 and 502 are ambiguous and should be construed in a manner that maximizes, rather than eliminates, member benefits. A statute is ambiguous when “viewing the act as a whole does not eliminate duplicative yet plausible meanings.” *R & R Indus. Park, L.L.C. v. Utah Prop. & Cas. Ins. Guar. Ass’n*, 2008 UT 80, ¶ 26, 199 P.3d 917.

The Act's purpose is to provide retirement benefits for public employees and it "shall be liberally construed to provide maximum benefits and protections consistent with sound fiduciary and actuarial principals." Utah Code Ann. §43-11-103. This language suggests a liberal or broad construction of the statutory scheme, in order to afford maximum protection for members of the various retirement systems administered by the Board. In short, the intent of the legislature in creating the URS seems to suggest that ambiguities in the code language ought to be construed in favor of the member.

Here, when looking at the whole act, there are duplicative yet plausible meanings of Sections 501 and 502. Ostler interprets forfeiture of service credits based on the amount of the refund to mean a member should receive a reduced retirement allowance because of the Legislature's carefully chosen words. *See Chris & Dick's Lumber & Hardware*, 2007 UT 16 §8. The Board, however, incorrectly interprets Sections 501 and 502 to mean the member forfeits all service credits because a service credit requires both member and employer contributions. Since there are two plausible interpretations, Sections 501 and 502 are ambiguous and the Act should be construed in a manner that maximizes, rather than eliminates, benefits. As such, Sections 501 and 502 should be construed to mean the member's retirement allowance is reduced based on the amount of the refund, but he is still entitled to an allowance based on employer contributions and employee contributions, if any, that remain in the system.

B. The Board Erred When It Determined Ostler's Claims against SLCC was Time Barred

1. The Statute of Limitations Began Running When Ostler Applied for Retirement Benefits in 2013

The Board erred when it held the statute of limitations began running when Ostler learned that SLCC failed to make the required contributions. A cause of action begins to accrue when all the elements of the claim are present. *Hill v. Allred*, 2001 UT 16, ¶ 15, 28 P.3d 1271. “[G]enerally the plaintiff must have suffered damages before a cause of action accrues for statute of limitations purposes. *State v. Huntington–Cleveland Irrigation Co.*, 2002 UT 40, ¶ 23, 446 Utah Adv. Rep. 3.

While Utah has not addressed this issue, other jurisdictions have held that claims related to retirement benefits do not accrue until the person actually retires. *See e.g., Washington Educ. Ass’n v. Washington Dep’t of Ret. Sys.*, 332 P.3d 439, 446 (Wash. 2014) (“actions alleging breach of pension contracts . . . begins to run at the time of retirement.”); *Bordwine v. Oklahoma Firefighters Pension & Ret. Sys.*, 99 P.3d 703, 705 (Okla. App. 2004) (Statute of limitation period for breach of retirement benefits contract “begins to run when a member acquires the right to sue,” which is “at the time of retirement when the right to sue becomes fixed.”); *Wagner v. B.F. Goodrich Co.*, 1991 Ohio App. Lexis 4321, 2-3 (Ohio Ct. App., Lorain County Sept. 11, 1991) (“The statute of limitations on a claim for retirement benefits does not begin to run until the claimant retires.”). Williston on Contracts also supports this position. *See* 31 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.”).

In *California Teachers' Association v. Governing Board*, 169 Cal. App. 3d 35, 44 (Cal. App. 5th Dist. 1985), the court held that the employees' "entitlement to service credits would not accrue until retirement benefits became payable upon retirement and, since service credits are dependent in part upon employer contributions, [the employees'] right to compel [the employer] to make additional contributions to the [retirement fund] likewise accrues only upon retirement."

Despite the number of cases holding that limitation period begins running upon retirement, the Board determined that an action regarding retirement benefits accrues before the actual date of retirement. To support its position, the Board relied on one unreported case out of Tennessee – *Bailey v. Shelby County*, 2013 WL 2149734 (Tenn. Ct. App. 2013). The Board claims that the period runs upon learning of the harm because it allows parties to sit on claims for years, or decades, while penalties and interest continue to accrue. This logic is directly in conflict with Utah case law that a party must suffer actual damages before a cause of action accrues. See *Huntington–Cleveland Irrigation Co.*, 2002 UT 40, ¶ 23. Here, Ostler was not damaged until his application for retirement benefits was denied in 2013. He filed an action with the Board only a few months later.

Furthermore, SLCC cannot claim that it was surprised by Ostler's claims against it because they were aware of his claims as early as 1999 when he filed his original complaint in the Third Judicial District Court. The claims were fully briefed at that time. As such, documents should still be available and memories should not have faded. The arguments that normally support time barring a claim are not present in this case.

Based on the foregoing, Ostler's claim was timely and the Board erred when it held it was barred by the statute of limitations.

2. Ostler's Claim against SLCC is Not Barred Under the Doctrine of Laches

The Board also erred in holding that Ostler's claim is barred under the doctrine of laches. "The equitable doctrine of laches is founded upon considerations of time and injury. Laches in legal significance is not mere delay, but delay that works a disadvantage to another." *Insight Assets, Inc. v. Farias*, 2013 UT 47, ¶17, 321 P.3d 1021. The doctrine of laches is based on the "maxim that equity aids the vigilant and not those who slumber on their rights." *Id.* "In Utah, laches traditionally has two elements: (1) the lack of diligence on the part of plaintiff and (2) an injury to defendant owing to such lack of diligence." *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Home*, 2012 UT 66, ¶ 29, 289 P.3d 502 (quotation and citation omitted).

First, Ostler did not lack diligence in pursuing his claim against SLCC. His claim did not ripen until he applied for retirement benefits and his application was denied. Even if the limitations period began running when he learned that SLCC failed to make the required contributions, he was still diligent in pursuing his claims. He filed his original complaint in 1999 wherein he alleged, among other things, that SLCC failed to make the required contributions on his behalf from 1992 through 1998. Unfortunately, this claim was filed in the Third Judicial District Court, which lacked subject matter jurisdiction. Ostler, SLCC, and the court did not realize the error at the time. The court dismissed Ostler's claim with prejudice. When the adjudicating body lacks jurisdiction, the

proceedings are treated as if the claim or case had not been previously litigated. *See SMP, Inc. v. Kirkman*, 843 P.2d 531, 533-34 (Utah Ct. App. 1992).

The Board held that Ostler lacked due diligence because he sat on his claim for a decade. Yet it gave no weight to the fact that Ostler did attempt to pursue his claim soon after his employment with SLCC was terminated.

Second, SLCC was not injured due to the lack of delay. It claims that it would be prohibitively expensive to make the required contributions at this time because interest and penalties have accrued over the years. This argument holds no merit. Ostler worked for SLCC from 1992 to 1998. He averaged more than 20 hours per week, yet it failed to make the required contributions. Ostler filed his original complaint in 1999. SLCC knew of Ostler's claim approximately one year after it missed the required contributions. It chose to oppose Ostler's claim at that time rather than make the contributions. The penalties and interest in 1999 would have been nominal. It cannot now claim that its harm would outweigh Ostler's harm. If SLCC made the required contributions, Ostler would have more than four service credits under the Public System and he would be entitled to retirement benefits.

Therefore, because Ostler did not lack diligence in pursuing his claims and SLCC cannot show it has been harmed due to his lack of diligence. The Board erred in holding Ostler's claim was barred under the doctrine of laches.

CONCLUSION

For the foregoing reasons, Ostler respectfully requests the court find that the Board's interpretation of the Act was erroneous, and therefore, Ostler is entitled to a retirement allowance based on his employers' contributions.

DATED this 5th day of July, 2016.

PRINCE, YEATES & GELDZAHLER

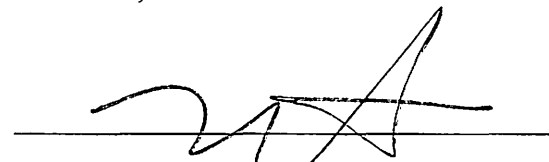
A handwritten signature in dark ink, appearing to be 'F. Vincent', written over a horizontal line.

Florence M. Vincent
Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 24(f)(1)(C) of the Utah Rules of Appellate Procedure, the undersigned counsel hereby certifies that according to the word count of the MS Word processing system used to prepare this Brief, this Brief contains 4,770 words, exclusive of the title page, table of contents, table of authorities, addendum, and certificates hereto. This Brief also complies with the typeface requirements of Utah R. App. P. 27(b) because it has been prepared in a proportionately spaced typeface using 13-point Times New Roman font in Windows Word 2013.

PRINCE, YEATES & GELDZAHLER



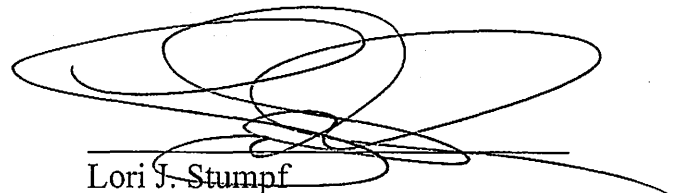
Florence M. Vincent

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2016, I caused a true and correct copy of the within and foregoing APPELLANT'S BRIEF to be electronically mailed to the following:

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ADDENDUM

4815-1922-0020, v. 1

ADDENDUM A

4815-1922-0020, v. 1

Article I

Declaration of Rights

Article I, Section 1 [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Article I, Section 2 [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

Article I, Section 3 [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

Article I, Section 4 [Religious liberty.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.

Article I, Section 5 [Habeas corpus.]

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

Article I, Section 6 [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms.

Article I, Section 7 [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Article I, Section 8 [Offenses bailable.]

- (1) All persons charged with a crime shall be bailable except:
 - (a) persons charged with a capital offense when there is substantial evidence to support the charge; or
 - (b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge; or
 - (c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community or is likely to flee the jurisdiction of the court if released on bail.
- (2) Persons convicted of a crime are bailable pending appeal only as prescribed by law.

Article I, Section 9 [Excessive bail and fines -- Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

Article I, Section 10 [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In capital cases the jury shall consist of twelve persons, and in all other felony cases, the jury shall consist of no fewer than eight persons. In other cases, the Legislature shall establish the number of jurors by statute, but in no event shall a jury consist of fewer than four persons. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

Article I, Section 11 [Courts open -- Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Article I, Section 12 [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by

statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

Article I, Section 13 [Prosecution by information or indictment -- Grand jury.]

Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The formation of the grand jury and the powers and duties thereof shall be as prescribed by the Legislature.

Article I, Section 14 [Unreasonable searches forbidden -- Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

Article I, Section 15 [Freedom of speech and of the press -- Libel.]

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Article I, Section 16 [No imprisonment for debt -- Exception.]

There shall be no imprisonment for debt except in cases of absconding debtors.

Article I, Section 17 [Elections to be free -- Soldiers voting.]

All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or out of the State, under regulations to be prescribed by law.

Article I, Section 18 [Attainder -- Ex post facto laws -- Impairing contracts.]

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

Article I, Section 19 [Treason defined -- Proof.]

Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act.

Article I, Section 20 [Military subordinate to the civil power.]

The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law.

Article I, Section 21 [Slavery forbidden.]

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State.

Article I, Section 22 [Private property for public use.]

Private property shall not be taken or damaged for public use without just compensation.

Article I, Section 23 [Irrevocable franchises forbidden.]

No law shall be passed granting irrevocably any franchise, privilege or immunity.

Article I, Section 24 [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

Article I, Section 25 [Rights retained by people.]

This enumeration of rights shall not be construed to impair or deny others retained by the people.

Article I, Section 26 [Provisions mandatory and prohibitory.]

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Article I, Section 27 [Fundamental rights.]

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

Article I, Section 28 [Declaration of the rights of crime victims.]

(1) To preserve and protect victims' rights to justice and due process, victims of crimes have these rights, as defined by law:

- (a) To be treated with fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal justice process;
- (b) Upon request, to be informed of, be present at, and to be heard at important criminal justice hearings related to the victim, either in person or through a lawful representative, once a criminal information or indictment charging a crime has been publicly filed in court; and

- (c) To have a sentencing judge, for the purpose of imposing an appropriate sentence, receive and consider, without evidentiary limitation, reliable information concerning the background, character, and conduct of a person convicted of an offense except that this subsection does not apply to capital cases or situations involving privileges.
- (2) Nothing in this section shall be construed as creating a cause of action for money damages, costs, or attorney's fees, or for dismissing any criminal charge, or relief from any criminal judgment.
- (3) The provisions of this section shall extend to all felony crimes and such other crimes or acts, including juvenile offenses, as the Legislature may provide.
- (4) The Legislature shall have the power to enforce and define this section by statute.

Article I, Section 29 [Marriage.]

- (1) Marriage consists only of the legal union between a man and a woman.
- (2) No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.

ADDENDUM B

4815-1922-0020, v. 1

Chapter 11 Utah State Retirement Systems Administration

Part 1 General Provisions

49-11-101 Title.

- (1) This title is known as the "Utah State Retirement and Insurance Benefit Act."
- (2) This chapter is known as the "Utah State Retirement Systems Administration."

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-102 Definitions.

As used in this title:

- (1)
 - (a) "Active member" means a member who:
 - (i) is employed by a participating employer and accruing service credit; or
 - (ii) within the previous 120 days:
 - (A) has been employed by a participating employer; and
 - (B) accrued service credit.
 - (b) "Active member" does not include a retiree.
- (2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of mortality tables as recommended by the actuary and adopted by the executive director, including regular interest.
- (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and adopted by the board upon which the funding of system costs and benefits are computed.
- (4)
 - (a) "Agency" means:
 - (i) a department, division, agency, office, authority, commission, board, institution, or hospital of the state;
 - (ii) a county, municipality, school district, local district, or special service district;
 - (iii) a state college or university; or
 - (iv) any other participating employer.
 - (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a subdivision of another entity listed under Subsection (4)(a).
- (5) "Allowance" or "retirement allowance" means the pension plus the annuity, including any cost of living or other authorized adjustments to the pension and annuity.
- (6) "Alternate payee" means a member's former spouse or family member eligible to receive payments under a Domestic Relations Order in compliance with Section 49-11-612.
- (7) "Amortization rate" means the board certified percent of salary required to amortize the unfunded actuarial accrued liability in accordance with policies established by the board upon the advice of the actuary.
- (8) "Annuity" means monthly payments derived from member contributions.
- (9) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of a participating employer whose appointed position is designated in the participating employer's charter, creation document, or similar document, and:

- (a) who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-12-407 for a Tier I appointive officer; and
 - (b) whose appointive position is full-time as certified by the participating employer for a Tier II appointive officer.
- (10)
- (a) "At-will employee" means a person who is employed by a participating employer and:
 - (i) who is not entitled to merit or civil service protection and is generally considered exempt from a participating employer's merit or career service personnel systems;
 - (ii) whose on-going employment status is entirely at the discretion of the person's employer; or
 - (iii) who may be terminated without cause by a designated supervisor, manager, or director.
 - (b) "At-will employee" does not include a career employee who has obtained a reasonable expectation of continued employment based on inclusion in a participating employer's merit system, civil service protection system, or career service personnel systems, policies, or plans.
- (11) "Beneficiary" means any person entitled to receive a payment under this title through a relationship with or designated by a member, participant, covered individual, or alternate payee of a defined contribution plan.
- (12) "Board" means the Utah State Retirement Board established under Section 49-11-202.
- (13) "Board member" means a person serving on the Utah State Retirement Board as established under Section 49-11-202.
- (14) "Certified contribution rate" means the board certified percent of salary paid on behalf of an active member to the office to maintain the system on a financially and actuarially sound basis.
- (15) "Contributions" means the total amount paid by the participating employer and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governors' and Legislators' Retirement Act.
- (16) "Council member" means a person serving on the Membership Council established under Section 49-11-202.
- (17) "Covered individual" means any individual covered under Chapter 20, Public Employees' Benefit and Insurance Program Act.
- (18) "Current service" means covered service under:
- (a) Chapter 12, Public Employees' Contributory Retirement Act;
 - (b) Chapter 13, Public Employees' Noncontributory Retirement Act;
 - (c) Chapter 14, Public Safety Contributory Retirement Act;
 - (d) Chapter 15, Public Safety Noncontributory Retirement Act;
 - (e) Chapter 16, Firefighters' Retirement Act;
 - (f) Chapter 17, Judges' Contributory Retirement Act;
 - (g) Chapter 18, Judges' Noncontributory Retirement Act;
 - (h) Chapter 19, Utah Governors' and Legislators' Retirement Act;
 - (i) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
 - (j) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.
- (19) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a system or plan offered under this title to provide a specified allowance to a retiree or a retiree's spouse after retirement that is based on a set formula involving one or more of the following factors:
- (a) years of service;
 - (b) final average monthly salary; or
 - (c) a retirement multiplier.

- (20) "Defined contribution" or "defined contribution plan" means any defined contribution plan or deferred compensation plan authorized under the Internal Revenue Code and administered by the board.
- (21) "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 education 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 described under this Subsection (21).
- (22) "Elected official":
- (a) means a person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office;
 - (b) includes a person who is appointed to serve an unexpired term of office described under Subsection (22)(a); and
 - (c) does not include a judge or justice who is subject to a retention election under Section 20A-12-201.
- (23)
- (a) "Employer" means any department, educational institution, or political subdivision of the state eligible to participate in a government-sponsored retirement system under federal law.
 - (b) "Employer" may also include an agency financed in whole or in part by public funds.
- (24) "Exempt employee" means an employee working for a participating employer:
- (a) who is not eligible for service credit under Section 49-12-203, 49-13-203, 49-14-203, 49-15-203, or 49-16-203; and
 - (b) for whom a participating employer is not required to pay contributions or nonelective contributions.
- (25) "Final average monthly salary" means the amount computed by dividing the compensation received during the final average salary period under each system by the number of months in the final average salary period.
- (26) "Fund" means any fund created under this title for the purpose of paying benefits or costs of administering a system, plan, or program.
- (27)
- (a) "Inactive member" means a member who has not been employed by a participating employer for a period of at least 120 days.
 - (b) "Inactive member" does not include retirees.
- (28)
- (a) "Initially entering" means hired, appointed, or elected for the first time, in current service as a member with any participating employer.
 - (b) "Initially entering" does not include a person who has any prior service credit on file with the office.
 - (c) "Initially entering" includes an employee of a participating employer, except for an employee that is not eligible under a system or plan under this title, who:
 - (i) does not have any prior service credit on file with the office;
 - (ii) is covered by a retirement plan other than a retirement plan created under this title; and
 - (iii) moves to a position with a participating employer that is covered by this title.
- (29) "Institution of higher education" means an institution described in Section 53B-1-102.

(30)

(a) "Member" means a person, except a retiree, with contributions on deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governors' and Legislators' Retirement Act, or with a terminated system.

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

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

(a) the member; and

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

(32) "Nonelective contribution" means an amount contributed by a participating employer into a participant's defined contribution account.

(33) "Normal cost rate":

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

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

(34) "Office" means the Utah State Retirement Office.

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

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

(37) "Part-time appointed board member" means a person:

(a) who is appointed to serve as a member of a board, commission, council, committee, or panel of a participating employer; and

(b) whose service as a part-time appointed board member does not qualify as a regular full-time employee as defined under Section 49-12-102, 49-13-102, or 49-22-102.

(38) "Pension" means monthly payments derived from participating employer contributions.

(39) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees' Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution Plan, the New Public Safety and Firefighter Tier II Defined Contribution Plan created by Chapter 23, Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created under Section 49-11-801.

(40)

(a) "Political subdivision" means any local government entity, including cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally separate and

distinct from the state and only if its employees are not by virtue of their relationship to the entity employees of the state.

- (b) "Political subdivision" includes local districts, special service districts, or authorities created by the Legislature or by local governments, including the office.
- (c) "Political subdivision" does not include a project entity created under Title 11, Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.
- (41) "Program" means the Public Employees' Insurance Program created under Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees' Long-Term Disability program created under Chapter 21, Public Employees' Long-Term Disability Act.
- (42) "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.
- (43) "Qualified defined contribution plan" means a defined contribution plan that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.
- (44) "Refund interest" means the amount accrued on member contributions at a rate adopted by the board.
- (45) "Retiree" means an individual who has qualified for an allowance under this title.
- (46) "Retirement" means the status of an individual who has become eligible, applies for, and is entitled to receive an allowance under this title.
- (47) "Retirement date" means the date selected by the member on which the member's retirement becomes effective with the office.
- (48) "Retirement related contribution":
 - (a) means any employer payment to any type of retirement plan or program made on behalf of an employee; and
 - (b) does not include Social Security payments or Social Security substitute payments made on behalf of an employee.
- (49) "Service credit" means:
 - (a) the period during which an employee is employed and compensated by a participating employer and meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are paid to the office; and
 - (b) periods of time otherwise purchasable under this title.
- (50) "Surviving spouse" means:
 - (a) the lawful spouse who has been married to a member for at least six months immediately before the death date of the member; or
 - (b) a former lawful spouse of a member with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612.
- (51) "System" means the individual retirement systems created by Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement Act, the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 22, Part 3, Tier II Hybrid Retirement System, and the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 23, Part 3, Tier II Hybrid Retirement System.

- (52) "Tier I" means a system or plan under this title for which:
- (a) an employee is eligible to participate if the employee initially enters regular full-time employment before July 1, 2011; or
 - (b) a governor or legislator who initially enters office before July 1, 2011.
- (53)
- (a) "Tier II" means a system or plan under this title provided in lieu of a Tier I system or plan for an employee, governor, legislator, or full-time elected official who does not have Tier I service credit in a system or plan under this title:
 - (i) if the employee initially enters regular full-time employment on or after July 1, 2011; or
 - (ii) if the governor, legislator, or full-time elected official initially enters office on or after July 1, 2011.
 - (b) "Tier II" includes:
 - (i) the Tier II hybrid system established under:
 - (A) Chapter 22, Part 3, Tier II Hybrid Retirement System; or
 - (B) Chapter 23, Part 3, Tier II Hybrid Retirement System; and
 - (ii) the Tier II Defined Contribution Plan (Tier II DC Plan) established under:
 - (A) Chapter 22, Part 4, Tier II Defined Contribution Plan; or
 - (B) Chapter 23, Part 4, Tier II Defined Contribution Plan.
- (54) "Unfunded actuarial accrued liability" or "UAAL":
- (a) is determined by the system's actuary; and
 - (b) means the excess, if any, of the accrued liability of a retirement system over the actuarial value of its assets.
- (55) "Voluntary deferrals" means an amount contributed by a participant into that participant's defined contribution account.

Amended by Chapter 84, 2016 General Session
Amended by Chapter 310, 2016 General Session

49-11-103 Purpose -- Liberal construction.

- (1) The purpose of this title is to establish:
- (a) retirement systems and the Utah Governors' and Legislators' Retirement Plan for members which provide:
 - (i) a uniform system of membership;
 - (ii) retirement requirements;
 - (iii) benefits for members;
 - (iv) funding on an actuarially sound basis;
 - (v) contributions; and
 - (vi) economy and efficiency in public service; and
 - (b) a central administrative office and a board to administer the various systems, plans, and programs established by the Legislature or the board.
- (2) This title shall be liberally construed to provide maximum benefits and protections consistent with sound fiduciary and actuarial principals.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 2

Retirement Office and Board

49-11-201 Establishment of retirement office -- An independent state agency -- Office exemption.

- (1)
 - (a) There is established the Utah State Retirement Office, which may also be known and function as the Utah State Retirement Systems or the Utah Retirement Systems.
 - (b) The office shall administer the systems, plans, and programs and perform all other functions assigned to it under this title.
- (2)
 - (a) The office is an independent state agency.
 - (b) It is subject to legislative and executive department budgetary review and comment.
- (3) The office may establish branch offices upon approval of the board.
- (4) The board and office are exempt from those acts which are applicable to state and other governmental entities under this code.

Amended by Chapter 15, 2014 General Session

49-11-202 Establishment of Utah State Retirement Board -- Quorum -- Terms -- Officers -- Expenses and per diem -- Membership Council established.

- (1) There is established the Utah State Retirement Board composed of seven board members determined as follows:
 - (a) Four board members, with experience in investments or banking, shall be appointed by the governor from the general public.
 - (b) One board member shall be a school employee appointed by the governor from at least three nominations submitted by the governing board of the school employees' association that is representative of a majority of the school employees who are members of a system administered by the board.
 - (c) One board member shall be a public employee appointed by the governor from at least three nominations submitted by the governing board of the public employee association that is representative of a majority of the public employees who are members of a system administered by the board.
 - (d) One board member shall be the state treasurer.
- (2) Four board members constitute a quorum for the transaction of business.
- (3)
 - (a) All appointments to the board shall be made on a nonpartisan basis, with the consent of the Senate.
 - (b) Board members shall serve until their successors are appointed and take the constitutional oath of office.
 - (c) When a vacancy occurs on the board for any reason, the replacement shall be appointed for the unexpired term.
- (4)
 - (a) Except as required by Subsection (4)(b), all appointed board members shall serve for four-year terms.
 - (b) Notwithstanding the requirements of Subsection (4)(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:

- (i) approximately half of the board is appointed every two years; and
 - (ii) no more than two of the board members appointed under Subsection (1)(a) are appointed every two years.
- (c) A board member who is appointed as a school employee or as a public employee who retires or who is no longer employed with a participating employer shall immediately resign from the board.
- (5)
 - (a) Each year the board shall elect a president and vice president from its membership.
 - (b) A board member may not receive compensation or benefits for the board member's service, but may receive per diem and travel expenses in accordance with:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (6)
 - (a) There is established a Membership Council to perform the duties under Subsection (10).
 - (b) A member of the council may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (7) The Membership Council shall be composed of 13 council members selected as follows:
 - (a) Three council members shall be school employees selected by the governing board of an association representative of a majority of school employees who are members of a system administered by the board.
 - (b) One council member shall be a classified school employee selected by the governing board of the association representative of a majority of classified school employees who are members of a system administered by the board.
 - (c) Two council members shall be public employees selected by the governing board of the association representative of a majority of the public employees who are members of a system administered by the board.
 - (d) One council member shall be a municipal officer or employee selected by the governing board of the association representative of a majority of the municipalities who participate in a system administered by the board.
 - (e) One council member shall be a county officer or employee selected by the governing board of the association representative of a majority of counties who participate in a system administered by the board.
 - (f) One council member shall be a representative of members of the Judges' Noncontributory Retirement System selected by the Judicial Council.
 - (g) One council member shall be a representative of members of the Public Safety Retirement Systems selected by the governing board of the association representative of the majority of peace officers who are members of the Public Safety Retirement Systems.
 - (h) One council member shall be a representative of members of the Firefighters' Retirement System selected by the governing board of the association representative of the majority of paid professional firefighters who are members of the Firefighters' Retirement System.
 - (i) One council member shall be a retiree selected by the governing board of the association representing the largest number of retirees, who are not public education retirees, from the Public Employees' Contributory and Public Employees' Noncontributory Retirement Systems.

- (j) One council member shall be a retiree selected by the governing board of the association representing the largest number of public education retirees.
- (8)
 - (a) Each entity granted authority to select council members under Subsection (7) may also revoke the selection at any time.
 - (b) Each term on the council shall be for a period of four years, subject to Subsection (8)(a).
 - (c) Each term begins on July 1 and expires on June 30.
 - (d) When a vacancy occurs on the council for any reason, the replacement shall be selected for the remainder of the unexpired term.
- (9) The council shall annually designate one council member as chair.
- (10) The council shall:
 - (a) recommend to the board and to the Legislature benefits and policies for members of any system or plan administered by the board;
 - (b) recommend procedures and practices to improve the administration of the systems and plans and the public employee relations responsibilities of the board and office;
 - (c) examine the record of all decisions affecting retirement benefits made by a hearing officer under Section 49-11-613;
 - (d) submit nominations to the board for the position of executive director if that position is vacant;
 - (e) advise and counsel with the board and the director on policies affecting members of the various systems administered by the office; and
 - (f) perform other duties assigned to it by the board.

Amended by Chapter 286, 2010 General Session

Amended by Chapter 321, 2010 General Session

49-11-203 Powers and duties of board.

- (1) The board shall:
 - (a) appoint an executive director to administer the office;
 - (b) receive and act upon reports covering the operations of the systems, plans, programs, and funds administered by the office;
 - (c) ensure that the systems, plans, programs, and funds are administered according to law;
 - (d) review any final order of a hearing officer and approve or modify the order at the board's discretion in accordance with Section 49-11-613;
 - (e) examine and approve an annual operating budget for the office;
 - (f) serve as investment trustees of the Utah State Retirement Investment Fund as provided under this title;
 - (g) maintain, in conjunction with participating employers and members, the systems, plans, and programs on an actuarially sound basis;
 - (h) report annually to the governor, the Legislature, and each participating employer the contribution rates, premium rates, and any adjustments necessary to maintain the systems, plans, and programs on a financially and actuarially sound basis;
 - (i) receive and act upon recommendations of the executive director;
 - (j) recommend to the governor and Legislature, through the executive director, any necessary or desirable changes to this title;
 - (k) develop broad policy for the long-term operation of the various systems, plans, and programs under broad discretion and power to perform the board's policymaking functions, including the specific authority to interpret and define any provision or term under this title when the board or office provides written documentation which demonstrates that the interpretation or

definition promotes uniformity in the administration of the systems or maintains the actuarial soundness of the systems, plans, or programs;

- (l) adopt interest rates, premium rates, and annual contribution rates after reviewing actuarial recommendations;
 - (m) establish the compensation of the executive director and adopt compensation plans and policies based on market surveys for positions in the office;
 - (n) take action consistent with this title for the administration of the systems, plans, and programs in order to carry out the purposes of this title;
 - (o) provide for audits of the systems, plans, programs, and funds;
 - (p) take actions not in conflict with the board's trust and fiduciary responsibilities or other law, with respect to the governance of the office which are substantially similar to those governing other public agencies; and
 - (q) otherwise exercise the powers and perform the duties conferred on the board by this title.
- (2) The board may:
- (a) subpoena witnesses and compel their attendance to testify before it, for which purpose each board member may administer oaths and affirmations to witnesses and others transacting business of the office;
 - (b) establish councils to recommend to the board and the executive director policies affecting members of any systems, plans, and programs administered by the board;
 - (c) pay the travel expenses of council members who attend council meetings; and
 - (d) sue and be sued in its own name.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-204 Powers and duties of executive director.

The executive director shall:

- (1) act as the executive officer of the board and the office;
- (2) administer the various systems, plans, programs, and functions assigned to the board or office;
- (3) subject to board review, develop and implement internal policies and procedures which administer and govern the day-to-day operations of the systems, plans, and programs;
- (4) transmit orders of a hearing officer made under Section 49-11-613 to the board;
- (5) provide information concerning the operation of the office to the board, the governor, the Legislature, participating employers, and employer and employee associations, unless otherwise restricted under Section 49-11-618;
- (6) inform the Legislature of any recommendations from the board regarding any necessary or desirable changes to this title;
- (7) consult with the Legislature on all legislation under this title;
- (8)
 - (a) recommend to the board an annual administrative budget covering the operations of the office and, upon approval, submit the budget along with the actuarial status of the funds to the governor and the Legislature for review and comment; and
 - (b) direct and control the subsequent expenditures of the budget;
- (9) employ, within the limitations of the budget, personnel to administer the systems, plans, programs, and funds assigned to the office, including consultants, actuaries, attorneys, medical examiners, investment counselors, and accountants to accomplish the purposes of this title;
- (10) establish independent financial records for each of the systems, plans, and programs or combine all financial records using acceptable principles of accounting to identify the assets and vested interests of each system, plan, or program;

- (11) maintain individual records necessary to provide benefits under this title;
- (12) keep in convenient form all records, accounts, and data necessary for the administration and actuarial valuation of the systems, plans, and programs;
- (13) adopt fees, charges, and upon the recommendation of the actuary, interest rates and tables for the administration of the systems, plans, and programs;
- (14) consolidate into one payment all monthly allowances and any defined contribution distributions if the integrity of the various funds is maintained through appropriate accounting records;
- (15) at least every three years:
 - (a) make an actuarial investigation into the mortality, service, and other experience of the members, participants, beneficiaries, and covered individuals of the systems, plans, and programs;
 - (b) actuarially value the assets and liabilities of the administered funds and accounts; and
 - (c) determine the rate of interest being earned by the funds;
- (16) report to the board findings under Subsection (15), with recommendations, including proposed changes in the rates of contribution or benefits that are necessary to maintain the actuarial soundness of the systems, plans, or programs;
- (17) regulate participating employers by:
 - (a) educating them on their duties imposed by this title;
 - (b) specifying the time, place, and manner in which contributions shall be withheld and paid; and
 - (c) requiring any reports necessary for the administration of this title; and
- (18) otherwise exercise the powers and perform the duties conferred on the executive director by this title.

Amended by Chapter 252, 2008 General Session

Part 3

Investment Fund

49-11-301 Creation -- Board to act as trustees of the fund -- Commingling and pooling of funds -- Interest earnings -- Funded ratio.

- (1) There is created a common trust fund known as the "Utah State Retirement Investment Fund" for the purpose of enlarging the investment base and simplifying investment procedures and functions.
- (2)
 - (a) The board shall act as trustees of the Utah State Retirement Investment Fund and, through the executive director, may commingle and pool the funds and investments of any system, plan, or program into the Utah State Retirement Investment Fund, if 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 office.
 - (b)
 - (i) 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.
 - (ii) The value of the transferred assets shall be calculated in accordance with generally accepted accounting principles.

- (c) Subsequent transfers of additional capital from participating funds shall be credited similarly to its respective trust account.
- (d) The income or principal or equity credit belonging to one participating fund may not be transferred to another, except for the purpose of:
 - (i) actuarially recommended transfers in order to adjust employer contribution rates for an employer that participates in both contributory and noncontributory systems; or
 - (ii) transfers which reflect the value of service credit accrued in different systems during a member's career.
- (3) The assets of the funds are for the exclusive benefit of the members, participants, and covered individuals and may not be diverted or appropriated for any purpose other than that permitted by this title.
- (4)
 - (a) Interest and other earnings shall be credited to each participating fund on a pro rata equity position basis.
 - (b)
 - (i) 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.
 - (ii) Each participating fund shall retain its proportionate equity in the reserve account.
- (5)
 - (a) The actuarial funded ratio of the systems may reach and be maintained at 110%, as determined by the board's actuary using assumptions adopted by the board, before the board is required to certify a decrease in contribution rates.
 - (b) Except as provided in Subsection (6), the board may not increase contribution rates to attain an actuarial funded ratio greater than 100%.
- (6)
 - (a) The cost of any amendment to this title shall be included in the final contribution rates adopted and certified by the board in accordance with Subsections 49-11-102(14) and 49-11-203(1)(I).
 - (b) If a preliminary certified contribution rate approved by the board prior to an annual general session or special session of the Legislature was maintained at a previous year's level that is higher than the contribution rate calculated by the board's actuary for that year in accordance with Subsection (5)(a), the board's final certified contribution rate shall be the sum of the actuarially determined costs from any amendment to this title during the general session or special session and the preliminary certified contribution rate.

Amended by Chapter 304, 2016 General Session

49-11-302 Board duties with respect to fund.

- (1) The board:
 - (a) shall review and establish the asset allocation of the Utah State Retirement Investment Fund for investment, and with the executive director, shall determine the method of investing the funds;
 - (b) through the executive director:
 - (i) shall invest the money in the Utah State Retirement Investment Fund; and
 - (ii) 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 Utah State Retirement Investment Fund is invested.

- (2) Fees for all services shall be paid from the interest earnings of the Utah State Retirement Investment Fund.
- (3) Title to real estate or any other fund investment may be:
 - (a) held in the name of the Utah State Retirement Investment Fund; or
 - (b) held in another name or names as determined by the board.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-303 Fund investment standard -- Prudent investor rule.

The fund shall be invested in accordance with the prudent investor rule established in Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act.

Amended by Chapter 116, 2005 General Session

49-11-304 Administrative costs -- Payable from fund.

General administrative costs of operating the office shall be assessed to the systems, plans, programs, and funds on a pro rata basis and shall be paid from earnings of the Utah State Retirement Investment Fund.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-305 Self-insurance option -- Purchase of liability insurance.

- (1) The office may self insure and may purchase commercial insurance in any amount.
- (2) The office may also purchase excess commercial insurance above the limits provided by the Governmental Immunity Act against any:
 - (a) risk created or recognized by the Governmental Immunity Act; or
 - (b) other action for which the board, office, or any of its employees, may be held liable.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-306 Definitions -- Scrutinized companies investment report -- Content -- Reporting -- Exceptions.

- (1) As used in this section:
 - (a) "Active business operations" means all business operations that are not inactive business operations.
 - (b)
 - (i) "Business operations" means investing, with actual knowledge on or after August 5, 1996, in Iran's petroleum sector which investment directly and significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.
 - (ii) "Business operations" does not include the retail sale of gasoline and related consumer products.
 - (c) "Company" means any foreign sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or any other foreign entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries or parent companies or affiliates of these entities or business associations, that exists for the purpose of making a profit.
 - (d)

- (i) "Direct holdings" means all publicly traded equity securities of a company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.
 - (ii) "Direct holdings" does not include publicly traded equity securities of a company held as part of a passive indexing investment strategy.
 - (e) "Inactive business operations" means the continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for that purpose.
 - (f) "Iran" means the Islamic Republic of Iran.
 - (g) "Petroleum resources" means petroleum or natural gas.
 - (h) "Public fund" means the Utah State Retirement Investment Fund created under Section 49-11-301.
 - (i) "Scrutinized business operations" means any active business operations that:
 - (i) are subject to or liable for sanctions under Public Law 104-172, the Iran Sanctions Act of 1996, as amended; and
 - (ii) involve the maintenance of:
 - (A) the company's existing assets or investments in Iran; or
 - (B) the deployment of new investments to Iran that meet or exceed the threshold referred to in Public Law 104-172, the Iran Sanctions Act of 1996, as amended.
 - (j) "Scrutinized company" means any company engaging in scrutinized business operations.
- (2)
- (a) The Utah State Retirement Office shall identify those scrutinized companies in which the public fund has direct holdings. In making the determination, the board shall review and rely on publicly available information regarding companies with business operations in Iran, including information provided by nonprofit organizations, research firms, international organizations, and government entities.
 - (b) The office shall assemble a list of all identified scrutinized companies.
 - (c) The office shall update the list, on an annual basis, with information provided and received from those entities listed in Subsection (2)(a).
- (3) The office shall prepare an annual report of public fund investments in scrutinized companies.
- (4) The report shall include amounts and other data and statistics designed to explain the past and current extent to which public fund investments in scrutinized companies:
- (a) are present; and
 - (b) are being prevented under Subsection (6).
- (5) The report shall be provided to the governor, the board, the president of the Senate, the speaker of the House of Representatives, and to each member and staff of the Retirement and Independent Entities Committee created under Section 63E-1-201.
- (6) Beginning July 1, 2011, using the most current list assembled under Subsection (2), the office shall prevent the investment of public funds direct holdings in a scrutinized company:
- (a) for public funds managed within the office, by not investing in direct holdings in a scrutinized company; and
 - (b) for public funds managed by contract by a professional investment manager:
 - (i) for existing contracts, by requesting that no more direct holdings be acquired in a scrutinized company; and
 - (ii) for future contracts, by stipulating in the contract that no new direct holdings be acquired in a scrutinized company.
- (7) The provisions of this section do not apply to:
- (a) money invested in a defined contribution plan as defined under Section 49-11-102; or

- (b) investments in a company that is primarily engaged in:
 - (i) supplying goods or services intended to relieve human suffering in Iran; or
 - (ii) promoting health, education, religious, welfare, or journalistic activities in Iran.

Amended by Chapter 352, 2011 General Session

49-11-307 Report on funded status -- Study of compensation.

- (1)
 - (a) The office shall report the funded status of the Utah State Retirement Investment Fund to the Retirement and Independent Entities Committee created under Section 63E-1-201.
 - (b) The report under Subsection (1)(a) shall be made at least annually or as requested by the committee.
- (2)
 - (a) If the Utah State Retirement Investment Fund reaches a funded status of 100%, the office shall make a report to that effect.
 - (b) The report shall be provided to the governor, the board, the president of the Senate, the speaker of the House of Representatives, and to each member and staff of the Retirement and Independent Entities Committee created under Section 63E-1-201.
- (3) Upon receipt of the report under Subsection (2)(b), the committee shall conduct a study on participating employee compensation and benefits to determine the need for adjustments in retirement benefits, salary, and other benefits for the recruitment and retention of a qualified workforce.
- (4) The committee shall report any findings and recommendations to the Legislative Management Committee.

Enacted by Chapter 266, 2010 General Session

Part 4
Service Credits

49-11-401 Transfer of service credit -- Eligibility for service credit -- Computation of service credit -- Retirement from most recent system.

- (1)
 - (a) The office shall make the transfer of service credit, together with related member and participating employer contributions, from one system to another upon terms and conditions established by the board.
 - (b) The terms and conditions may not result in a loss of accrued benefits.
- (2) Transfer of employment from a position covered by one system to a position covered by another system does not cause the employee to lose active member status.
- (3) In the accrual of service credit, the following provisions apply:
 - (a) A person employed and compensated by a participating employer who meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan shall receive service credit for the term of the employment provided that all required contributions are paid to the office.

- (b) An allowance or other benefit may not accrue under this title which is based upon the same period of employment as has been the basis for any retirement benefits under some other public retirement system.
- (c) The board shall fix the minimum time per day, per 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.
- (d) Service credit shall be accrued on a fiscal or calendar year basis as determined by the participating employer.
- (e) A member may not accrue more than one year of service credit per fiscal or calendar year as determined by the office.
- (f) Fractions of years of service credit shall be accumulated and counted in proportion to the work performed.
- (4) The office may estimate the amount of service credit, compensation, or age of any member, participant, or alternate payee, if information is not contained in the records.
- (5) A member shall retire from the system which most recently covered the member.
- (6)
 - (a) Under no circumstances may service credit earned by a member under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act, be transferable to any other system or plan under this title.
 - (b) Under no circumstances may service credit earned by a member under one of the following systems be transferable to the system created under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or under Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act:
 - (i) Chapter 12, Public Employees' Contributory Retirement Act;
 - (ii) Chapter 13, Public Employees' Noncontributory Retirement Act;
 - (iii) Chapter 14, Public Safety Contributory Retirement Act;
 - (iv) Chapter 15, Public Safety Noncontributory Retirement Act;
 - (v) Chapter 16, Firefighters' Retirement Act; or
 - (vi) Chapter 19, Utah Governors' and Legislators' Retirement Act.

Amended by Chapter 266, 2010 General Session

49-11-402 Purchase of military service credit.

- (1) Except as provided under Subsection (7), a member who is absent from employment with a participating employer by reason of an official call to full-time United States military service may receive service credit for that military service as follows:
 - (a) the member, the participating employer, or the member and participating employer jointly shall make the required payments, as determined by the office, to the system in which the member participated at the time of the official call, according to the law governing that particular system;
 - (b) prior to a member's retirement date, the required payments shall be made:
 - (i) during the period of full-time United States military service;
 - (ii) after the military service, but within a period not to exceed three times the period of military service up to a maximum of five years; or
 - (iii) as otherwise allowed by federal law;

- (c) required payments shall be based on the member's compensation at the time of the official military call;
 - (d) if a required payment is not made within the time allowed under Subsection (1)(b), the member or participating employer may purchase the service credit as allowed in Subsection (2); and
 - (e) the member shall return to employment with the participating employer upon receiving an honorable discharge from military service and there may not be intervening employment outside of the employment with the participating employer.
- (2)
- (a) A member, a participating employer, or a member and a participating employer jointly, may purchase service credit for full-time United States military service, resulting from an official call to duty, if the member has four or more years of service credit and the military service does not otherwise qualify for service credit under this title.
 - (b) Payment to the office for a military service credit purchase shall be made to the system under which the member is currently covered in an amount determined by the office based on a formula recommended by the actuary and adopted by the board.
 - (c) The purchase shall be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.
 - (d) If total payment is not completed prior to retirement, service credit shall be prorated in accordance with the amount paid.
- (3) For purposes of Subsection (2), full-time United States military service does not include any regularly scheduled or annual military service that is required by a reserve unit, National Guard unit, or any other United States military unit.
- (4)
- (a) If any of the factors used to determine the cost of a service credit purchase change at or before the member's retirement date, the cost of the purchase shall be recalculated.
 - (b) If the recalculated cost exceeds the amount paid for the purchase, the member may:
 - (i) pay the increased cost, plus interest, to receive the full amount of service credit; or
 - (ii) not pay the increased cost and have the purchased service credit prorated.
- (5) If the recalculated cost under Subsection (4) is less than the amount paid for the purchase, the office shall refund the excess payment to the member or participating employer who paid for the purchase.
- (6)
- (a) The board may adopt rules under which a member may make the necessary payments to the office for purchases under this title as permitted by federal law.
 - (b) The office may reject any payments if the office determines the tax status of the system, plans, or programs would be jeopardized by allowing the payment.
- (7) Notwithstanding the provisions under Subsection (1), a member may receive service credit for military service covered under the provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. Sec. 4301 et seq., under the terms and conditions provided under that law.

Amended by Chapter 243, 2015 General Session

49-11-403 Purchase of public service credit not otherwise qualifying for benefit.

- (1) A member, a participating employer, or a member and a participating employer jointly may purchase service credit equal to the period of the member's employment in the following:
 - (a) United States federal employment;

- (b) employment in a private school based in the United States, if the member received an employer paid retirement benefit for the employment;
 - (c) public employment in another state or territory of the United States which qualifies the member for membership in the public plan or system covering the employment, but only if the member does not qualify for any retirement benefits based on the employment;
 - (d) forfeited service credit in this state if the member does not qualify for an allowance based on the service credit;
 - (e) full-time public service while on an approved leave of absence;
 - (f) the period of time for which disability benefits were paid if:
 - (i) the member was receiving:
 - (A) long-term disability benefits;
 - (B) short-term disability benefits; or
 - (C) worker's compensation disability benefits; and
 - (ii) the member's employer had not entered into a benefit protection contract under Section 49-11-404 during the period the member had a disability due to sickness or accident;
 - (g) employment covered by a retirement plan offered by a public or private system, organization, or company designated by the State Board of Regents, if the member forfeits any retirement benefit from that retirement plan for the period of employment to be purchased under this Subsection (1)(g);
 - (h) employment in a charter school located within the state if the member forfeits any retirement benefit under any other retirement system or plan for the period of employment to be purchased under this Subsection (1)(h); or
 - (i) employment with a participating employer that is exempt from coverage under this title under a written request for exemption with the office, if the member forfeits any retirement benefit under any other retirement system or plan for the period of employment to be purchased under this Subsection (1)(i).
- (2) A member shall:
- (a) have at least four years of service credit before a purchase can be made under this section; and
 - (b) forfeit service credit and any defined contribution balance based on employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.
- (3)
- (a) To purchase credit under this section, the member, a participating employer, or a member and a participating employer jointly shall make payment to the system under which the member is currently covered.
 - (b) The amount of the payment shall be determined by the office based on a formula that is:
 - (i) recommended by the actuary; and
 - (ii) adopted by the board.
- (4) The purchase may be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.
- (5) Total payment must be completed prior to the member's effective date of retirement or service credit will be prorated in accordance with the amount paid.
- (6)
- (a) For a purchase made before July 1, 2010, if any of the factors used to determine the cost of a service credit purchase change at or before the member's retirement date, the cost of the purchase shall be recalculated at the time of retirement.

- (b) For a purchase made before July 1, 2010, if the recalculated cost exceeds the amount paid for the purchase, the member, a participating employer, or a member and a participating employer jointly may:
 - (i) pay the increased cost, plus interest, to receive the full amount of service credit; or
 - (ii) not pay the increased cost and have the purchased service credit prorated.
- (c) For a purchase made on or after July 1, 2010:
 - (i) the purchase shall be made in accordance with rules:
 - (A) adopted by the board based on recommendations by the board's actuary; and
 - (B) in effect at the time the purchase is completed; and
 - (ii) the cost of the service credit purchase shall not be recalculated at the time of retirement.
- (7) If the recalculated cost under Subsection (6)(a) is less than the amount paid for the purchase, the office shall refund the excess payment to the member or participating employer who paid for the purchase.
- (8)
 - (a) The board may adopt rules under which a member may make the necessary payments to the office for purchases under this title as permitted by federal law.
 - (b) The office may reject any payments if the office determines the tax status of the system, plans, or programs would be jeopardized by allowing the payment.
- (9) An employee who elects to participate exclusively in the defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan, may not purchase service credit for that period of employment.

Amended by Chapter 243, 2015 General Session

49-11-404 Benefit protection contract authorized -- Annual report required.

- (1)
 - (a) A participating employer may establish a salary protection program under which its employees are paid during periods of disability.
 - (b) If a salary protection program is established, a participating employer may enter into benefit protection contracts with the office.
 - (c) A salary protection program shall:
 - (i) pay benefits based on the rate of compensation of the member with a disability at the time of disability;
 - (ii) pay benefits over the period of the disability;
 - (iii) not include settlement or lump sum payments of any type;
 - (iv) be substantially equivalent to the long-term disability programs offered under Chapter 21, Public Employees' Long-Term Disability Act; and
 - (v) comply with requirements adopted by the board.
- (2) A benefit protection contract shall allow:
 - (a) the member with a disability to be considered an active member in a system and continue to accrue service credit and salary credit based on the member's rate of pay in effect at the time disability commences;
 - (b) the office to require participating employer contributions to be paid before granting service credit and salary credit to the member;
 - (c) the member with a disability to remain eligible during the contract period for any benefits provided by the system that covers the member; and

- (d) the benefit for the member with a disability to be improved by the annual cost-of-living increase factor applied to retired members of the system that covered the member on the date the member is eligible to receive benefits under a benefit protection contract.
- (3)
 - (a) The office shall establish the manner and times when employer contributions are paid.
 - (b) A failure to make the required payments is cause for the office to cancel a contract.
 - (c) Service credit and salary credit granted and accrued up to the time of cancellation may not be forfeited.
- (4) For an employee covered under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act, a benefit protection contract shall allow:
 - (a) for the defined benefit portion for a member covered under Chapter 22, Part 3, Tier II Hybrid Retirement System, or Chapter 23, Part 3, Tier II Hybrid Retirement System:
 - (i) the member with a disability to be considered an active member in a system and continue to accrue service credit and salary credit based on the member's rate of pay in effect at the time disability commences;
 - (ii) the office to require participating employer contributions to be paid before granting service credit and salary credit to the member;
 - (iii) the member with a disability to remain eligible during the contract period for any benefits provided by the system that covers the member; and
 - (iv) the benefit for the member with a disability to be improved by the annual cost-of-living increase factor applied to retired members of the system that covered the member on the date the member is eligible to receive benefits under a benefit protection contract; and
 - (b) for the defined contribution portion for a member covered under Chapter 22, Part 3, Tier II Hybrid Retirement System, or Chapter 23, Part 3, Tier II Hybrid Retirement System, or for a participant covered under Chapter 22, Part 4, Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan, the office to require participating employers to continue making the nonelective contributions on behalf of the member with a disability or participant in the amounts specified in Subsection 49-22-303(1)(a), 49-22-401(1), 49-23-302(1)(a), or 49-23-401(1).
- (5) A participating employer that has entered into a benefit protection contract under this section shall submit an annual report to the office which identifies:
 - (a) the employees receiving long-term disability benefits under policies initiated by the participating employer and approved under the benefit protection contract;
 - (b) the employees that have applied for long-term disability benefits and who are waiting approval; and
 - (c) the insurance carriers that are actively providing long-term disability benefits.
- (6) If an employer fails to provide the annual report required under Subsection (5), the benefits that would have accrued under the benefit protection contract shall be forfeited.
- (7) The board may adopt rules to implement and administer this section.

Amended by Chapter 366, 2011 General Session

49-11-405 Service credit from different systems or plans -- Eligibility and calculation of service credit.

(1)

- (a) A member who has service credit from two or more systems or one or more systems and the Utah Governors' and Legislators' Retirement Plan may combine service credit for purposes of determining eligibility for retirement.
- (b) The provisions of Subsection (1)(a) do not apply to concurrent service.
- (2) To be eligible for the calculation under Subsection (3), the member's service credit earned under the different systems or the Utah Governors' and Legislators' Retirement Plan shall at least equal the minimum amount of service credit required to retire from the system which most recently covered the member.
- (3) If a member meets the requirements of Subsection (2), the office shall calculate the member's allowance using all service credit earned from any system or the Utah Governors' and Legislators' Retirement Plan, with no actuarial reduction applied to the allowance, except the service credit used to calculate the benefit shall be increased or decreased to reflect the value of the assets transferred.
- (4) The office shall establish the standards used for calculating any increase or decrease in the service credit.
- (5) This section does not apply to a retiree who is subject to Section 49-11-504 and Chapter 11, Part 12, Postretirement Reemployment Restrictions Act.

Amended by Chapter 310, 2016 General Session

49-11-406 Governor's appointed executives and senior staff -- Appointed legislative employees -- Transfer of value of accrued defined benefit -- Procedures.

- (1) As used in this section:
 - (a) "Defined benefit balance" means the total amount of the contributions made on behalf of a member to a defined benefit system plus refund interest.
 - (b) "Senior staff" means an at-will employee who reports directly to an elected official, executive director, or director and includes a deputy director and other similar, at-will employee positions designated by the governor, the speaker of the House, or the president of the Senate and filed with the Department of Human Resource Management and the Utah State Retirement Office.
- (2) In accordance with this section and subject to federal law, a member who has service credit from a system may elect to be exempt from coverage under a defined benefit system and to have the member's defined benefit balance transferred from the defined benefit system or plan to a defined contribution plan in the member's own name if the member is:
 - (a) the state auditor;
 - (b) the state treasurer;
 - (c) an appointed executive under Subsection 67-22-2(1)(a);
 - (d) an employee in the Governor's Office;
 - (e) senior staff in the Governor's Office of Management and Budget;
 - (f) senior staff in the Governor's Office of Economic Development;
 - (g) senior staff in the Commission on Criminal and Juvenile Justice;
 - (h) a legislative employee appointed under Subsection 36-12-7(3)(a);
 - (i) a legislative employee appointed by the speaker of the House of Representatives, the House of Representatives minority leader, the president of the Senate, or the Senate minority leader; or
 - (j) senior staff of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- (3) An election made under Subsection (2):

- (a) is final, and no right exists to make any further election;
 - (b) is considered a request to be exempt from coverage under a defined benefits system; and
 - (c) shall be made on forms provided by the office.
- (4) The board shall adopt rules to implement and administer this section.

Amended by Chapter 310, 2013 General Session

49-11-407 Service credit purchases by active employees only.

Notwithstanding any other provision of this title, only an active member may purchase service credit under this title.

Enacted by Chapter 439, 2011 General Session

Part 5

General Member Provisions

49-11-501 Refunds of member contributions -- Transfers of contributions to defined contribution plan.

- (1) If a member shall for any cause, except retirement, permanent or temporary disability, or death, terminate employment with a participating employer the member may leave the member contributions in the fund or may receive a refund of the member contributions as provided under this section.
- (2) A member who applies for a refund of member contributions shall apply in writing on forms provided by the office.
- (3) A refund of member contributions may not be made to a member within 60 days from the last date of the pay period for which contributions are made by or on behalf of the member.
- (4) If the member is reemployed by a participating employer within the time period under Subsection (3), the member is not eligible for a refund.
- (5) A member who receives a refund of member contributions forfeits the service credit based on those contributions.
- (6) A member who is exempted from or becomes ineligible for service credit in a system but who remains employed by a participating employer may request a direct transfer of member contributions to a qualified plan.
- (7) A member who remains employed with an employer which has withdrawn from a system may request a plan-to-plan transfer of member contributions to a qualified defined contribution plan administered by the board or a qualified plan offered by the member's employer.
- (8) Refund interest shall be paid on refunds of member contributions under this section.

Amended by Chapter 240, 2003 General Session

49-11-502 Redeposits of refunds -- Time period.

- (1)
 - (a) If a member receives a refund of member contributions and is subsequently reemployed in a position covered by a system or the Utah Governors' and Legislators' Retirement Plan, the participating employer or the member may redeposit an amount equal to the member contributions refunded and interest charged under Section 49-11-503.

- (b) The interest shall be compounded annually from the date of refund through the month of payment.
- (c) If a redeposit is made, service credit shall be restored to the member's account and credited to the same system or the Utah Governors' and Legislators' Retirement Plan from which the refund was taken.
- (2)
 - (a) A member may redeposit an amount equal to a prior refund of member contributions and interest charges in one lump sum or in monthly installments by payroll deduction in a time period determined by the office.
 - (b) If the total redeposit is not made prior to the member's retirement date, the amount of redeposit paid to the office shall be refunded to the member without interest and the member is not entitled to service credit based on the amount of the refund.
 - (c) The interest rate charged during the installment period shall be a fixed rate calculated at the time of the first installment payment in accordance with Section 49-11-503.
- (3) A member who redeposits a refund of member contributions under this section shall receive the amount of service credit forfeited in taking the refund.
- (4)
 - (a) For purposes of this section, the Public Employees' Contributory Retirement System created under Chapter 12, Public Employees' Contributory Retirement Act, and the Public Employees' Noncontributory Retirement System created under Chapter 13, Public Employees' Noncontributory Retirement Act, are considered one system.
 - (b) For purposes of this section, the Public Safety Contributory Retirement System created under Chapter 14, Public Safety Contributory Retirement Act, and the Public Safety Noncontributory Retirement System created under Chapter 15, Public Safety Noncontributory Retirement Act, are considered one system.
 - (c) For purposes of this section, the Judges' Contributory Retirement System created under Chapter 17, Judges' Contributory Retirement Act, and the Judges' Noncontributory Retirement System created under, Chapter 18, Judges' Noncontributory Retirement Act, are considered one system.
- (5)
 - (a) The board may make rules to allow a member to make the necessary payments to the office for redeposits under this title as permitted by federal law.
 - (b) The office may reject any payments if the office determines the tax status of the systems, plans, or programs may be jeopardized by allowing the payment.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-503 Rate of interest on redeposits, adjustments, and delinquent payments.

The rate of interest charged on redeposits of refunds, adjustments, or delinquent payments is the greater of:

- (1) the interest rate as determined under a formula approved by the board; or
- (2) the actuarial interest rate as of the preceding June 30.

Amended by Chapter 240, 2003 General Session

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

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

- (i) employment requiring 20 or more hours of work per week; or
- (ii) at least a half-time teaching contract.
- (b) "Reemployed," "reemploy," or "reemployment" means the same as those terms are defined in Section 49-11-1202.
- (2)
 - (a) Except for the provisions of Subsection (3), the provisions of this section do not apply to a person who is subject to the provisions of Chapter 11, Part 12, Postretirement Reemployment Restrictions Act.
 - (b) This section does not apply to employment as an elected official.
- (3) A person who is not a retiree under this title is not subject to any postretirement restrictions under this title.
- (4) A retiree of an agency who is reemployed may not earn additional service credit, if the retiree is reemployed by:
 - (a) a different agency; or
 - (b) the same agency after six months from the retirement date.
- (5) A retiree of an agency who is reemployed on a full-time basis by the same agency within six months of the date of retirement is subject to the following:
 - (a) the agency shall immediately notify the office;
 - (b) the office shall cancel the retiree's allowance and reinstate the retiree to active member status;
 - (c) the allowance cancellation and reinstatement to active member status is effective on the first day of the month following the date of reemployment;
 - (d) the reinstated retiree may not retire again with a recalculated benefit for a two-year period from the date of cancellation of the original allowance, and if the retiree retires again within the two-year period, the original allowance shall be resumed; and
 - (e) a reinstated retiree retiring after the two-year period shall be credited with the service credit in the retiree's account at the time of the first retirement and from that time shall be treated as a member of a system, including the accrual of additional service credit, but subject to recalculation of the allowance under Subsection (9).
- (6) A retiree of an agency who is reemployed by the same agency within six months of retirement on a less than full-time basis by the same agency is subject to the following:
 - (a) the retiree may earn, without penalty, compensation from that position which is not in excess of the exempt earnings permitted by Social Security;
 - (b) if a retiree receives compensation in a calendar year in excess of the Social Security limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;
 - (c) the effective date of a suspension and reinstatement of an allowance shall be set by the office; and
 - (d) any suspension of a retiree's allowance under this Subsection (6) shall be applied on a calendar year basis.
- (7) For six months immediately following retirement, the retiree and participating employer who are subject to Subsection (6) shall:
 - (a) maintain an accurate record of gross earnings in employment;
 - (b) report the gross earnings at least monthly to the office;
 - (c) immediately notify the office in writing of any postretirement earnings under Subsection (6); and
 - (d) immediately notify the office in writing whether postretirement earnings equal or exceed the exempt earnings under Subsection (6).
- (8)

- (a) If a participating employer hires a retiree, the participating employer may not make a retirement related contribution in an amount that exceeds the normal cost rate as defined under Section 49-11-102 on behalf of the retiree under Subsections (8)(b) and (c).
- (b) The contributions under Subsection (8)(a) are not required, but if paid, shall be paid to a retiree-designated:
 - (i) qualified defined contribution plan administered by the board, if the participating employer participates in a qualified defined contribution plan administered by the board; or
 - (ii) qualified defined contribution plan offered by the participating employer if the participating employer does not participate in a qualified defined contribution plan administered by the board.
- (c) Notwithstanding the provisions of Subsection (8)(b), if an employer is not participating in a qualified defined contribution plan administered by the board, the employer may elect to pay the contributions under Subsection (8)(a) to a deferred compensation plan administered by the board.
- (9) A retiree who has returned to work, accrued additional service credit, and again retires shall have the retiree's allowance recalculated using:
 - (a) the formula in effect at the date of the retiree's original retirement for all service credit accrued prior to that date; and
 - (b) the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.
- (10) The board may make rules to implement this section.

Amended by Chapter 310, 2016 General Session

Part 6

Procedures and Records

49-11-601 Payment of employer contributions -- Penalties for failure to comply -- Adjustments to be made.

- (1) The employer contributions, fees, premium taxes, contribution adjustments, and other required payments shall be paid to the office by the participating employer as determined by the executive director.
- (2) A participating employer that fails to withhold the amount of any member contributions, as soon as administratively possible, shall also pay the member contributions to the office out of its own funds.
- (3) Except as limited by Subsections (6) and (7), if a participating employer does not make the contributions required by this title within 30 days of the end of the pay period, the participating employer is liable to the office as provided in Section 49-11-604 for:
 - (a) delinquent contributions;
 - (b) interest on the delinquent contributions as calculated under Section 49-11-503; and
 - (c) a penalty equal to the greater of:
 - (i) \$250; or
 - (ii) 50% of the total contributions for the employees for the period of the reporting error.
- (4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.

(5) Contributions made in error will be refunded to the participating employer or member that made the contributions.

(6)

- (a) An employer described in Subsection 49-12-202(2)(c) or (d), or Subsection 49-13-202(2)(c), (d), or (e) that paid retirement benefits to an employee or retiree that were not required by this title may offer the retirement benefits paid to the employee as a substantial substitute to service credit and retirement benefits that may have been earned by the employee under this title.
 - (b) An employee who received retirement benefits under Subsection (6)(a) may sign an affidavit that:
 - (i) acknowledges the substantial substitute received by the employee under Subsection (6)(a); and
 - (ii) irrevocably relinquishes service credit and retirement benefits that may have accrued to the employee under this title effective from the employee's date of employment with the employer described in Subsection (6)(a) to the date of the employer's election under Section 49-12-202 or 49-13-202.
 - (c) Nothing in this section shall be construed to diminish an employer's right to recover past retirement benefits other than Social Security, paid to an employee or retiree, in error or under mistaken belief that the employer was not a participating employer.
- (7) If the employer files with the office an irrevocable written relinquishment of service credit signed by the member or retiree:
- (a) the office shall proportionally reduce any delinquent contributions, penalties, fees, or interest assessed against a participating employer in connection with a member or retiree described in Subsection (6)(a); and
 - (b) the system has no liability to the employee for benefits relinquished under Subsection (6)(b).

Amended by Chapter 243, 2015 General Session

49-11-602 Participating employer to maintain records -- Time limit -- Penalties for failure to comply.

(1) A participating employer shall:

- (a) maintain records necessary to calculate benefits under this title and other records necessary for proper administration of this title as required by the office; and
 - (b) maintain records that indicate whether an employee is receiving:
 - (i) a benefit under state or federal law that, under Subsection 49-12-102(1)(b)(vi) or (vii), is excluded from the definition of benefits normally provided for purposes of Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory Retirement Act, or Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
 - (ii) a benefit under a benefit package generally offered to similarly situated employees.
- (2) A participating employer shall maintain the records required under Subsection (1) until the earliest of:
- (a) three years after the date of retirement of the employee from a system or plan;
 - (b) three years after the date of death of the employee; or
 - (c) 65 years from the date of employment with the participating employer.
- (3) A participating employer shall be liable to the office for:

- (a) any liabilities and expenses, including administrative expenses and the cost of increased benefits to members, resulting from the participating employer's failure to maintain records under this section; and
- (b) a penalty equal to 1% of the participating employer's last month's contributions.
- (4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.
- (5) The executive director may estimate the length of service, compensation, or age of any member, if that information is not contained in the records.
- (6)
 - (a) A participating employer shall enroll an employee, make reports, submit contributions, and provide other requested information electronically in a manner approved by the office.
 - (b) A participating employer shall treat any information provided electronically or otherwise by the office as subject to the confidentiality provisions of this title.

Amended by Chapter 109, 2013 General Session

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

- (1) As soon as administratively possible, but in no event later than 30 days after the end of each pay period, a participating employer shall report and certify to the office:
 - (a) the eligibility for service credit accrual of:
 - (i) each current employee;
 - (ii) each new employee as the new employee begins employment; and
 - (iii) any changes to eligibility for service credit accrual of each employee;
 - (b) the compensation of each current employee eligible for service credit; and
 - (c) other factors relating to the proper administration of this title as required by the executive director.
- (2) Each participating employer shall submit the reports required under Subsection (1) in a format approved by the office.
- (3) A participating employer shall be liable to the office for:
 - (a) any liabilities and expenses, including administrative expenses and the cost of increased benefits to employees, resulting from the participating employer's failure to correctly report and certify records under this section;
 - (b) a penalty equal to the greater of:
 - (i) \$250; or
 - (ii) 50% of the total contributions for the employees for the period of the reporting error; and
 - (c) attorney fees.
- (4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.
- (5) The executive director may estimate the length of service, compensation, or age of any employee, if that information is not contained in the records.

Amended by Chapter 243, 2015 General Session

49-11-604 Office audits of participating employers -- Penalties for failure to comply.

- (1)

- (a) The office may perform on-site compliance audits of participating employers to determine compliance with reporting, contribution, and certification requirements under this title.
- (b) The office may request records to be provided by the participating employer at the time of the audit.
- (c) Audits shall be conducted at the sole discretion of the office after reasonable notice to the participating employer of at least five working days.
- (d) The participating employer shall extract and provide records as requested by the office in an appropriate, organized, and usable format.
- (e) Failure of a participating employer to allow access, provide records, or comply in any way with an office audit shall result in the participating employer being liable to the office for:
 - (i) any liabilities and expenses, including administrative expenses and travel expenses, resulting from the participating employer's failure to comply with the audit; and
 - (ii) a penalty equal to 1% of the participating employer's last month's contributions.
- (2) If the audit reveals a participating employer's failure to make contributions as required under Section 49-11-601, a failure to maintain records as required under Section 49-11-602, or a failure to correctly report or certify eligibility as required under Section 49-11-603, the participating employer shall reimburse the office for the cost of the audit.
- (3) If the audit reveals that an incorrect benefit has been paid by the office to a member, participant, alternate payee, or beneficiary due to a participating employer's failure to comply with the requirements of Section 49-11-601, 49-11-602, or 49-11-603, in addition to the liabilities contained in Subsection (2), the participating employer shall be liable to the office for the following:
 - (a) the actuarial cost of correcting the incorrect benefit; and
 - (b) administrative expenses.
- (4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.

Amended by Chapter 240, 2003 General Session

49-11-605 Notification and correction of violations.

If a participating employer discovers that it has violated Section 49-11-601, 49-11-602, or 49-11-603 prior to the office becoming aware of the violation, notifies the office of the violation in writing, and corrects the violation within a period agreed to by the office, the penalties under those sections shall be waived.

Enacted by Chapter 250, 2002 General Session

49-11-606 Full participation.

Except as provided in Sections 49-12-203, 49-12-204, 49-13-203, 49-13-204, 49-14-203, and 49-15-203, participating employers shall cover all employees eligible for service credit under this title.

Enacted by Chapter 250, 2002 General Session

49-11-607 Determination of benefits -- Errors in records or calculations -- Correction of errors by the office.

- (1) After the retirement date, 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)
 - (a) Errors in the records or in the calculations of the office which result in an incorrect benefit to any member, retiree, participant, covered individual, alternate payee, or beneficiary shall be corrected by the office if the correction results in a modification of the benefit amount of \$5 or more.
 - (b) Future payments shall be made to any member, retiree, participant, covered individual, alternate payee, or beneficiary to:
 - (i) pay the benefit to which the member or beneficiary was entitled; or
 - (ii) recover any overpayment.
- (3)
 - (a) Errors in the records or calculation of a participating employer which result in an incorrect benefit to a member, retiree, participant, covered individual, alternate payee, or beneficiary shall be corrected by the participating employer.
 - (b) If insufficient employer contributions have been received by the office, the participating employer shall pay any delinquent employer contributions, plus interest under Section 49-11-503, required by the office to maintain the system, plan, or program affected on an actuarially sound basis.
 - (c) If excess contributions have been received by the office, the contributions shall be refunded to the participating employer or member which paid the contributions.
- (4) If a dispute exists between a participating employer and a member at the time of the member's retirement which will affect the member's benefit calculation, and notice of the dispute is given to the office prior to the calculation of a member's benefit, the benefit may be paid based on the member's retirement date and the records available and then recalculated upon settlement of the dispute.

Amended by Chapter 316, 2013 General Session

49-11-608 False statements or records -- Unlawfully cashing benefit checks.

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

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-609 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) As used in this section, "member" includes a member, retiree, participant, covered individual, a spouse of a retiree participating in the insurance benefits created by Sections 49-12-404 and 49-13-404, or an alternate payee under a domestic relations order dividing a defined contribution account.
- (2) The most recent beneficiary designations signed by the member and filed with the office, including electronic records, at the time of the member's death are binding in the payment of any benefits due under this title.

- (3)
 - (a) Except where an optional continuing benefit is chosen, or the law makes a specific benefit designation to a dependent spouse, a member may revoke a beneficiary designation at any time and may execute and file a different beneficiary designation with the office.
 - (b) A change of beneficiary designation shall be completed on forms provided by the office.
- (4)
 - (a) All benefits payable by the office 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, Intestate Succession and Wills, if:
 - (i) no beneficiary is designated or if all designated beneficiaries have predeceased the member;
 - (ii) the location of the beneficiary or secondary beneficiaries cannot be ascertained by the office within 12 months of the date a reasonable attempt is made by the office to locate the beneficiaries; or
 - (iii) the beneficiary has not completed the forms necessary to pay the benefits within six months of the date that beneficiary forms are sent to the beneficiary's last-known address.
 - (b)
 - (i) A payment may not be made to a person included in any of the groups referred to in Subsection (4)(a) if at the date of payment there is a living person in any of the groups preceding it.
 - (ii) Payment to a person in any group based upon receipt from the person of an affidavit in a form satisfactory to the office that:
 - (A) there are no living individuals in the group preceding it;
 - (B) the probate of the estate of the deceased has not been commenced; and
 - (C) more than 30 days have elapsed since the date of death of the decedent.
- (5) Benefits paid under this section shall be:
 - (a) a full satisfaction and discharge of all claims for benefits under this title; and
 - (b) payable by reason of the death of the decedent.

Amended by Chapter 227, 2016 General Session

49-11-610 Benefits payable in name of beneficiary -- Delivery.

- (1)
 - (a) Any benefits payable to a beneficiary shall be made in the name of and delivered to the beneficiary or the lawfully appointed guardian or conservator of the beneficiary, or delivered as otherwise ordered by a court of competent jurisdiction under Title 75, Utah Uniform Probate Code.
 - (b) If the benefit involves a payment not to exceed an amount authorized by the Utah Uniform Probate Code to any one beneficiary, the office may, without the appointment of a guardian or conservator or the giving of a bond, pay the amount due to the beneficiary or to the persons assuming their support.
 - (c) The payment shall be in either a lump sum or in monthly amounts.
 - (d) The total of the payments made under this section shall fully discharge and release the office from any further claims.
- (2) A beneficiary who qualifies for a monthly benefit under this section shall apply in writing to the office.
- (3) The allowance shall begin on the first day of the month following the month in which the:
 - (a) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or

- (b) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

Amended by Chapter 15, 2014 General Session

49-11-611 Benefits and money in the fund exempt from taxation -- Exceptions.

- (1) Except as provided under Subsection (2), the benefits accrued or paid to any beneficiary of any system or plan administered by the board and the contributions, money, securities, and other assets in the funds created by this title are exempt from any state, county, or municipal tax.
- (2) An allowance, a refund of member contributions, or other benefits that are subject to federal income tax, which is received by a member, retiree, alternate payee, participant, or beneficiary of any system or plan administered by the board and which has not been taxed is subject to Title 59, Chapter 10, Individual Income Tax Act.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-612 Domestic relations order benefits -- Nonassignability of benefits or payments -- Exemption from legal process.

- (1) As used in this section, "domestic relations order benefits" means:
 - (a) an allowance;
 - (b) a defined contribution account established under:
 - (i) Part 8, Defined Contribution Plans;
 - (ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
 - (iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act;
 - (c) a continuing monthly death benefit established under:
 - (i) Chapter 14, Part 5, Death Benefit;
 - (ii) Chapter 15, Part 5, Death Benefit;
 - (iii) Chapter 16, Part 5, Death Benefit;
 - (iv) Chapter 17, Part 5, Death Benefit;
 - (v) Chapter 18, Part 5, Death Benefit; or
 - (vi) Chapter 19, Part 5, Death Benefit;
 - (d) a lump sum death benefit provided under:
 - (i) Chapter 12, Part 5, Death Benefit;
 - (ii) Chapter 13, Part 5, Death Benefit;
 - (iii) Chapter 22, Part 5, Death Benefit; or
 - (iv) Chapter 23, Part 5, Death Benefit; or
 - (e) a refund of member contributions upon termination.
- (2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree, participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or any other retirement right accrued or accruing under this title and the assets of the funds created by this title are not subject to alienation or assignment by the member, retiree, participant, or their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal or equitable process.
- (3)
 - (a) The office may, upon the request of the retiree, deduct from the retiree's allowance, insurance premiums or other dues payable on behalf of the retiree, but only to those entities that have received the deductions prior to February 1, 2002.

- (b) The office may, upon the request of a retiree of a public safety or firefighter system, deduct insurance premiums from the retiree's allowance.
- (4)
 - (a) The office shall provide for the division of domestic relations order benefits with former spouses and family members under an order of a court of competent jurisdiction with respect to domestic relations matters on file with the office.
 - (b) The court order shall specify the manner in which the domestic relations order benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.
 - (c) Domestic relations order benefits split under a domestic relations order are subject to the following:
 - (i) the amount to be paid or the period for which payments shall be made under the original domestic relations order may not be altered if the alteration affects the actuarial calculation of the allowance;
 - (ii) payments to an alternate payee shall begin at the time the member or beneficiary begins receiving payments; and
 - (iii) the alternate payee shall receive payments in the same form as allowances received by the member or beneficiary.
 - (d) To be valid, a court order under this section must be received by the office within 12 months of the death of the member.
 - (e) A court order under this section may not require and may not be interpreted in any way to require the office to provide any type of benefit or any option not otherwise provided under this title.
- (5) 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 or beneficiary of a system, plan, or program under this title to offset any amount that member or beneficiary owes to a system, plan, or program administered by the board.
- (6) The board shall make rules to implement this section.

Amended by Chapter 243, 2015 General Session

49-11-613 Appeals procedure -- Right of appeal to hearing officer -- Board reconsideration -- Judicial review.

- (1)
 - (a) A member, retiree, participant, alternative payee, covered individual, employer, participating employer, and covered employer shall inform themselves of their rights and obligations under this title.
 - (b) Subject to the provisions in Subsection (8), any dispute regarding a benefit, right, obligation, or employment right under this title is subject to the procedures provided under this section.
 - (c)
 - (i) A person who disputes a benefit, right, obligation, or employment right under this title shall request a ruling by the executive director who may delegate the decision to the deputy director.
 - (ii) A request for a ruling to the executive director under this section shall constitute the initiation of an action for purposes of the limitations periods prescribed in Section 49-11-613.5.
 - (d) A person who is dissatisfied by a ruling under Subsection (1)(c) with respect to any benefit, right, obligation, or employment right under this title shall have 30 days from the date of the ruling to request a review of that claim by a hearing officer.

- (e) The executive director, on behalf of the board, may request that the hearing officer review a dispute regarding any benefit, right, obligation, or employment right under this title by filing a notice of board action and providing notice to all affected parties in accordance with rules adopted by the board.
- (2) The hearing officer shall:
 - (a) be hired by the executive director after consultation with the board;
 - (b) follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, except as specifically modified under this title;
 - (c) hear and determine all facts relevant to a decision, including facts pertaining to applications for benefits under any system, plan, or program under this title and all matters pertaining to the administration of the office; and
 - (d) make conclusions of law in determining the person's rights under any system, plan, or program under this title and matters pertaining to the administration of the office.
- (3) The board shall review and approve or deny all decisions of the hearing officer in accordance with rules adopted by the board.
- (4) The moving party in any proceeding brought under this section shall bear the burden of proof.
- (5) A party may file an application for reconsideration by the board 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 hearing officer; or
 - (d) that the party has discovered new material evidence that could not, with reasonable diligence, have been discovered or procured prior to the hearing.
- (6) The board shall affirm, reverse, or modify the decision of the hearing officer, or remand the application to the hearing officer for further consideration.
- (7) A party aggrieved by the board's decision may obtain judicial review by complying with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (8) The program shall provide an appeals process for medical claims that complies with federal law.
- (9) The board may make rules to implement this section.

Amended by Chapter 251, 2016 General Session

49-11-613.5 Limitation of actions -- Cause of action.

- (1) Subject to the procedures provided in Section 49-11-613 and except as provided in Subsection (3), an action regarding a benefit, right, obligation, or employment right brought under this title may be commenced only within four years of the date that the cause of action accrues.
- (2)
 - (a) A cause of action accrues under this title and the limitation period in this section runs from the date when the aggrieved party became aware, or through the exercise of reasonable diligence should have become aware, of the facts giving rise to the cause of action, including when:
 - (i) a benefit, right, or employment right is or should have been granted;
 - (ii) a payment is or should have been made; or
 - (iii) an obligation is or should have been performed.
 - (b) If a claim involves a retirement service credit issue under this title:
 - (i) a cause of action specifically accrues at the time the requisite retirement contributions relating to that retirement service credit are paid or should have been paid to the office; and

- (ii) the person is deemed to be on notice of the payment or nonpayment of those retirement contributions.
- (3) If an aggrieved party fails to discover the facts giving rise to the cause of action due to misrepresentation, fraud, intentional nondisclosure, or other affirmative steps to conceal the cause of action, a limitation period prescribed in this section does not begin to run until the aggrieved party actually discovers the existence of the cause of action.
- (4) The person claiming a benefit, right, obligation, or employment right arising under this title has the burden of bringing the action within the period prescribed in this section.
- (5) Nothing in this section relieves a member, retiree, participant, alternative payee, covered individual, employer, participating employer, or covered employer of the obligations under this title.
- (6) The office is not required to bring a claim on behalf of a member, retiree, participant, alternative payee, covered individual, employer, participating employer, or covered employer.
- (7)
 - (a) A limitation period provided in this section does not apply to actions for which a specific limit is otherwise specified in this title or by contract, including master policies or other insurance contracts.
 - (b) For actions arising under this title, this section supersedes any applicable limitation period provided in Title 78B, Chapter 2, Statutes of Limitations.

Enacted by Chapter 251, 2016 General Session

49-11-614 Vesting on termination of system or plan.

If any system or the Utah Governors' and Legislators' Retirement Plan is terminated, the accrued benefits of each member in the terminated system or plan shall immediately become vested and nonforfeitable.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-615 Election to grandfather -- Applicability of provisions.

- (1) Notwithstanding any other provision of this title, the 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, as amended, which is incorporated by reference.
- (2) This constitutes an election of the grandfather provision under Section 415(b)(10)(C) of the Internal Revenue Code.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-616 Benefits information.

- (1) The office shall provide written general information to each participating employer concerning benefits available under this title.
- (2)
 - (a) A participating employer shall provide the information under Subsection (1) to each eligible employee:
 - (i) immediately upon termination of service, leave of absence, commencement of long-term disability benefits, or retirement; and

- (ii) in person or, if the employee is unavailable to receive the information in person, by mailing the information to the employee's last known address.
- (b)
 - (i) Each participating employer shall maintain the records necessary to demonstrate that the employer has provided the information outlined in Subsection (1) as required in Subsection (2)(a).
 - (ii) The records shall be made available to the office upon request.
- (3)
 - (a) The office shall provide each participating employer with a form to be signed by each employee to verify that the employee has been given in person the information required by this section.
 - (b) If an employer provides information under Subsection (1) by mail as provided in Subsection (2)(a)(ii), the employer shall:
 - (i) indicate on the form that the information was mailed to the employee and the address to which the information was mailed;
 - (ii) maintain the records necessary to demonstrate that the employer complied with the requirements under this Subsection (3); and
 - (iii) make the records available to the office upon request.

Amended by Chapter 243, 2015 General Session

49-11-617 Original documents.

- (1) At the reasonable discretion of the office, any document relating to this title may be treated as an original, whether created by photocopy, facsimile, e-mail, electronic transmission, imaging, or other technology.
- (2) The office may communicate with participating employers, members, beneficiaries, and others through electronic means as determined appropriate by the office.

Amended by Chapter 316, 2013 General Session

49-11-618 Members and beneficiaries subject to chapter -- Furnishing of information -- Confidentiality of information.

- (1)
 - (a) Every member, retiree, participant, covered individual, alternate payee, and beneficiary is subject to this chapter, rules made by the board or office, board actions, resolutions, policies, and procedures adopted under this title.
 - (b) Each member, retiree, participant, covered individual, alternate payee, and beneficiary shall furnish to the office any information required to carry out the purposes of this title.
- (2)
 - (a) All data in the possession of the office is confidential, and may not be divulged by the office except as permitted by board action.
 - (b) All data in the possession of the office or divulged pursuant to board action shall be used for the sole purpose of carrying into effect the provisions of this title.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-619 Permanent relinquishment of benefit -- Procedure.

- (1)

- (a) Except for defined contribution plans authorized by this title, a member, retiree, or beneficiary may permanently relinquish a benefit under this title by signing an irrevocable written relinquishment.
- (b) If the retiree has designated a beneficiary which is still living, the written relinquishment must be signed by both the retiree and the beneficiary.
- (2) The value of the benefit permanently relinquished under Subsection (1) shall remain in the fund from which the benefit was relinquished and shall be used in the calculation of future contribution rates.
- (3) A designated beneficiary may disclaim beneficiary status and the benefit shall then be payable first to any alternate designated beneficiary, then dispersed under Title 75, Chapter 2, Intestate Succession and Wills, as applicable.
- (4) The office is not required to recognize or accept any written relinquishment that jeopardizes the tax qualified status of the systems, plans, or programs or otherwise violates federal law.

Amended by Chapter 252, 2008 General Session

49-11-620 Closing the retirement account -- Status of retirees and beneficiaries.

- (1) The monthly benefit payable for the month a retiree, beneficiary, or alternate payee dies shall be a full monthly benefit and shall be payable to the estate of the deceased.
- (2) If more than one year has elapsed since the death of a retiree whose designated beneficiary is deceased and whose account payable to the beneficiary amounts to \$100 or less, the account shall be closed and further payment may not be made.

Enacted by Chapter 250, 2002 General Session

49-11-621 Change in employer -- Eligibility for retirement.

- (1) If a participating employer is dissolved, consolidated, merged, or is structurally changed in any way, but similar services are provided by the same members after the change, the members may not be considered terminated for purposes of eligibility for retirement until the members actually terminate and are otherwise eligible for retirement.
- (2) The board may adopt rules to implement this section.

Enacted by Chapter 116, 2005 General Session

49-11-622 Subsidiaries or other companies owned by independent corporations -- Participation -- Withdrawal.

- (1) Notwithstanding any other provision of this title, an independent corporation, as defined in Section 63E-1-102, which participates in a system or plan prior to July 1, 2006, and which owns a subsidiary, or other company may provide for the participation of employees with that system or plan as follows:
 - (a) the independent corporation shall determine a date that is no later than January 1, 2007, on which the independent corporation shall make an election under Subsection (2);
 - (b) an employee hired by the independent corporation and transferred to a subsidiary, or other company on or after the date set under Subsection (1)(a) may not participate in a system or plan; and
 - (c) the independent corporation shall pay to the office any actuarial or administrative cost, determined by the office, to have arisen out of the transfer of the employees from the independent corporation.

- (2) The independent corporation described under Subsection (1) shall elect to:
 - (a) continue its participation for all current employees covered by a system or plan and transferred to a subsidiary, or other company, as of the date set under Subsection (1)(a); or
 - (b) withdraw from participation in all systems or plans for all employees covered by a system or plan and transferred to the subsidiary, or other company, as of the date set under Subsection (1)(a).
- (3) If an independent corporation elects to continue participation under Subsection (2)(a), the independent corporation and the transferred employees shall continue to be subject to the laws and the rules governing the system or plan in which the employee participates, including the accrual of service credit and payment of contributions.

Enacted by Chapter 309, 2006 General Session

49-11-623 Withdrawing entity -- Participation election date -- Withdrawal costs -- Rulemaking.

- (1) As used in this section, "withdrawing entity" means an entity that:
 - (a) participates in a system or plan under this title prior to July 1, 2014;
 - (b) provides mental health and substance abuse services for a county under Section 17-50-318;
 - (c) after beginning participation with a system or plan under this title, has modified its federal tax status to a nonprofit organization that qualifies under Section 501(c)(3) of the Internal Revenue Code; and
 - (d) is not a state institution of higher education as described in Section 53B-2-101.
- (2) Notwithstanding any other provision of this title, a withdrawing entity may provide for the participation of its employees with that system or plan as follows:
 - (a) the withdrawing entity shall determine a date that is no later than January 1, 2017, on which the withdrawing entity shall make an election under Subsection (3); and
 - (b) subject to the provisions of Subsection (6), the withdrawing entity shall pay to the office any reasonable actuarial and administrative costs determined by the office to have arisen out of an election made under this section.
- (3) The withdrawing entity described under Subsection (2) may elect to:
 - (a)
 - (i) continue its participation for all current employees of the withdrawing entity, who are covered by a system or plan as of the date set under Subsection (2)(a); and
 - (ii) withdraw from participation in all systems or plans for all persons initially entering employment with the withdrawing entity, beginning on the date set under Subsection (2)(a); or
 - (b) withdraw from participation in all systems or plans for all current and future employees of the withdrawing entity, beginning on the date set under Subsection (2)(a).
- (4)
 - (a) An election provided under Subsection (3):
 - (i) is a one-time election made no later than the date specified under Subsection (2)(a);
 - (ii) shall be documented by a resolution adopted by the governing body of the withdrawing entity;
 - (iii) is irrevocable; and
 - (iv) applies to the withdrawing entity as the employer and to all employees of the withdrawing entity.

- (b) Notwithstanding an election made under Subsection (3), any eligibility for service credit earned by an employee under this title before the date specified under Subsection (2)(a) is not affected by this section.
- (5) If a withdrawing entity elects to continue participation under Subsection (3), the withdrawing entity shall continue to be subject to the laws and the rules governing the system or plan in which an employee participates, including the accrual of service credit and payment of contributions.
- (6) Before a withdrawing entity may withdraw under this section, the withdrawing entity and the office shall enter into an agreement on:
 - (a) the costs described under Subsection (2)(b); and
 - (b) arrangements for the payment of the costs described under Subsection (2)(b).
- (7) The board shall make rules to implement this section.

Amended by Chapter 364, 2015 General Session

Part 7

Allowance Increase

49-11-701 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 Laws of Utah 1988, Chapter 195, Section 2, 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, Individual Income Tax Act, 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, General Taxation Policies, or Chapter 10, Individual Income Tax Act, shall be waived for members whose noncompliance is attributable to Section 49-11-611 and this section. This only applies to tax year 1989.
- (5) The administrator shall comply with Title 59, Chapter 10, Part 4, Withholding of Tax, 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.

Amended by Chapter 250, 2008 General Session

Part 8

Defined Contribution Plans

49-11-801 Defined contribution plans authorized -- Subject to federal and state laws -- Rules to implement this provision -- Costs of administration -- Limitations on eligibility -- Protection of tax status.

- (1)
 - (a) The board shall establish and administer defined contribution plans established under the Internal Revenue Code.
 - (b) Voluntary deferrals and nonelective contributions shall be permitted according to the provisions of these plans as established by the board.
 - (c) Except as provided in Subsections 49-22-303(2)(a), 49-22-401(3)(a), 49-23-302(2)(a), and 49-23-401(3)(a), the defined contribution account balance is vested in the participant.
- (2)
 - (a) Voluntary deferrals and nonelective contributions shall be posted to the participant's account.
 - (b) Except as provided in Subsections 49-22-303(3), 49-22-401(4), 49-23-302(3), and 49-23-401(4), participants may direct the investment of their account in the investment options established by the board and in accordance with federal and state law.
- (3)
 - (a) The board may make rules and create plan documents to implement and administer this section.
 - (b) The board may adopt rules under which a participant may put money into a defined contribution plan as permitted by federal law.
 - (c) The office may reject any payments if the office determines the tax status of the systems, plans, or programs would be jeopardized by allowing the payment.
 - (d) Costs of administration shall be paid as established by the board.
- (4) Voluntary deferrals and nonelective contributions may be invested separately or in conjunction with the Utah State Retirement Investment Fund.
- (5) The board or office may take actions necessary to protect the tax qualified status of the systems, plans, and programs under its control, including the movement of individuals from defined contribution plans to defined benefit systems or the creation of excess benefit plans authorized by federal law.
- (6) The office may, at its sole discretion, correct errors made in the administration of its defined contribution plans.

Amended by Chapter 258, 2015 General Session

49-11-802 Permanent relinquishment of defined contribution benefit -- Procedure.

A participant or designated beneficiary under a defined contribution plan may permanently relinquish the benefit by signing an irrevocable written relinquishment.

Enacted by Chapter 250, 2002 General Session

Part 9

Insurance Premium Tax Revenues Distribution

49-11-901.5 Premium tax revenues -- Distribution.

(1)

(a) In accordance with this section there shall be paid to the office:

- (i) 50% of the annual tax levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon premiums for property insurance, as defined under Section 31A-1-301, and as applied to fire and allied lines insurance collected by insurance companies within the state; and
- (ii) 10% of all money assessed and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon premiums for life insurance, as defined in Section 31A-1-301, within the state.

(b) Payments to the fund shall be made annually until the service liability under this part is liquidated, after which the tax revenue provided in this Subsection (1) ceases.

(2) The office shall distribute the premium tax revenue paid under Subsection (1) as follows:

- (a) an amount determined by the office to fully fund the long-term disability program provided for firefighters under Section 49-23-601;
- (b) an amount determined by the office to the Firefighters' Retirement Trust Fund created under Section 49-16-104 equal to the amount when calculated as a percentage of the certified contribution rate for members in Divisions A and B, as defined under Section 49-16-301, that is the percentage of the certified contribution rate paid to the Firefighters' Retirement Trust Fund on July 1, 2004; and
- (c) any remaining amount in accordance with Section 49-11-902.

Enacted by Chapter 290, 2011 General Session

Enacted by Chapter 439, 2011 General Session

49-11-902 Premium tax revenues -- Formula -- Deposits.

(1) If the premium tax revenue received by the office under Subsection 49-11-901.5(1) and first paid in accordance with Subsections 49-11-901.5(2)(a) and (b), including any remaining amount, the office shall deposit the amount in the:

- (a) Public Safety Contributory Trust Fund created under Section 49-14-104; and
- (b) Public Safety Noncontributory Retirement Trust Fund created under Section 49-15-104.

(2) The money deposited under this section shall be used to fund an increase for retirees in the public safety retirement systems from a 2.5% maximum annual cost-of-living adjustment to a 4% maximum annual cost-of-living adjustment under Sections 49-14-403 and 49-15-403 in the public safety retirement systems.

(3) As required to implement this section, the office shall make the calculations and deposits for the equitable apportionment of money between:

- (a) Division A1 and B1; and
- (b) the contributory and noncontributory trust funds.

Amended by Chapter 290, 2011 General Session
Amended by Chapter 439, 2011 General Session

Part 10

Partial Lump-Sum Payments

49-11-1001 Partial lump-sum payment option.

- (1) Except as provided in Subsection (5), at the time of application for retirement, a member may elect to receive a lump-sum payment of a portion of the member's retirement allowance equal to 12 or 24 months of the member's allowance to be paid upon retirement.
- (2) The member's allowance shall be reduced to reflect the actuarial value of the lump-sum received under Subsection (1).
- (3) A member who has received a lump-sum payment under this section is not eligible for another lump-sum payment under this section.
- (4) The board may make rules to implement this section.
- (5) A member or participant of a system or plan under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act, is not eligible to make an election under this section.

Amended by Chapter 266, 2010 General Session

Part 11

Public Information Disclosure

49-11-1101 Public financial information disclosure on website -- Exclusions.

- (1) The office shall provide the following financial information for the public on its website:
 - (a) administrative expense transactions from its general ledger accounting system; and
 - (b) employee compensation information by individual employee at least annually.
- (2) For purposes of this part, the office is not required to provide other information for public access on its website, if the disclosure of the information would conflict with the fiduciary obligations of the board, including:
 - (a) revenue transactions; and
 - (b) member and participant information.

Amended by Chapter 281, 2016 General Session

49-11-1102 Public notice of administrative board meetings -- Posting on Utah Public Notice Website.

- (1) The office shall provide advance public notice of meetings and agendas on the Utah Public Notice Website established in Section 63F-1-701 for administrative board meetings.
- (2) The office may post other public materials, as directed by the board, on the Utah Public Notice Website.

Enacted by Chapter 281, 2016 General Session

49-11-1103 Public information requests.

The office shall establish, in policy, time limits to respond to public information requests.

Enacted by Chapter 281, 2016 General Session

Part 12
Postretirement Reemployment Restrictions Act

49-11-1201 Title.

This part is known as the "Postretirement Reemployment Restrictions Act."

Enacted by Chapter 310, 2016 General Session

49-11-1202 Definitions.

As used in this part:

- (1)
 - (a) "Affiliated emergency services worker" means a person who:
 - (i) is employed by a participating employer;
 - (ii) performs emergency services for another participating employer that is a different agency;
 - (iii) is trained in techniques and skills required for the emergency service;
 - (iv) continues to receive regular training required for the service;
 - (v) is on the rolls as a trained affiliated emergency services worker of the participating employer; and
 - (vi) provides ongoing service for a participating employer, which service may include service as a volunteer firefighter, reserve law enforcement officer, search and rescue worker, emergency medical technician, ambulance worker, park ranger, or public utilities worker.
 - (b) "Affiliated emergency services worker" does not include a person who performs work or service but does not meet the requirements of Subsection (1)(a).
- (2) "Amortization rate" means the amortization rate, as defined in Section 49-11-102, to be applied to the system that would have covered the retiree if the retiree's reemployed position were deemed to be an eligible, full-time position within that system.
- (3)
 - (a) "Reemployed," "reemploy," or "reemployment" means work or service performed for a participating employer after retirement, in exchange for compensation.
 - (b) Reemployment includes work or service performed on a contract for a participating employer if the retiree is:
 - (i) listed as the contractor; or
 - (ii) an owner, partner, or principal of the contractor.
- (4) "Retiree":
 - (a) means a person who:
 - (i) retired from a participating employer; and
 - (ii) begins reemployment on or after July 1, 2010, with a participating employer; and
 - (b) does not include a person:

- (i)
 - (A) who was reemployed by a participating employer before July 1, 2010; and
 - (B) whose participating employer that reemployed the person under Subsection (4)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with Section 49-11-621 on or after July 1, 2010; or
- (ii) who is working under a phased retirement agreement in accordance with Title 49, Chapter 11, Part 13, Phased Retirement.

Enacted by Chapter 310, 2016 General Session

Amended by Chapter 310, 2016 General Session, (Coordination Clause)

49-11-1203 Applicability.

- (1)
 - (a) This part does not apply to employment as an elected official if the elected official's position is not full time as certified by the participating employer.
 - (b) The provisions of this part apply to an elected official whose elected position is full time as certified by the participating employer.
- (2)
 - (a) This part does not apply to employment as a part-time appointed board member who does not receive any remuneration, stipend, or other benefit for the part-time appointed board member's service.
 - (b) For purposes of this Subsection (2), remuneration, stipend, or other benefit does not include receipt of per diem and travel expenses up to the amounts established by the Division of Finance in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (3) This part does not apply to a person who is reemployed as an active senior judge or an active senior justice court judge as described by Utah State Court Rules, appointed to hear cases by the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

Enacted by Chapter 310, 2016 General Session

49-11-1204 General Restrictions -- Election following one-year separation -- Amortization rate.

- (1) A retiree may not for the same period of reemployment:
 - (a)
 - (i) earn additional service credit; or
 - (ii) receive any retirement related contribution from a participating employer; and
 - (b) receive a retirement allowance.
- (2) Except as provided under Section 49-11-1205, the office shall cancel the retirement allowance of a retiree if the reemployment with a participating employer begins within one year of the retiree's retirement date.
- (3) If a reemployed retiree has completed the one-year separation from employment with a participating employer required under Subsection (2), the retiree may elect to:
 - (a) cancel the retiree's retirement allowance and instead earn additional service credit in accordance with this title; or

- (b) continue to receive the retiree's retirement allowance, forfeit earning additional service credit, and forfeit any retirement-related contribution from the participating employer that reemployed the retiree.
- (4)
 - (a) If the office receives notice of the election of a reemployed retiree under Subsection (3)(a), the office shall immediately cancel the retiree's retirement allowance.
 - (b)
 - (i) If the retiree under Subsection (4)(a) is eligible for retirement coverage in the reemployed position, the office shall reinstate the retiree to active member status on the first day of the month following the date of the employee's election.
 - (ii) Except as provided under Subsection (4)(c), if the retiree is not otherwise eligible for retirement coverage in the reemployed position, the participating employer that reemploys the retiree shall contribute the amortization rate to the office on behalf of the retiree.
 - (c) A participating employer that reemploys a retiree in accordance with Subsection 49-11-1205(1) is not required to contribute the amortization rate to the office.
- (5)
 - (a) For a retiree under Subsection (4)(b) who retires within two years from the date of reemployment, the office:
 - (i) may not recalculate a retirement benefit for the retiree; and
 - (ii) shall resume the allowance that was being paid to the retiree at the time of the cancellation.
 - (b) Subject to Subsection (1), for a retiree who is reinstated to active membership under Subsection (4)(b) and retires two or more years after the date of reinstatement to active membership, the office shall:
 - (i) resume the allowance that was being paid at the time of cancellation; and
 - (ii) calculate an additional allowance for the retiree based on the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.

Enacted by Chapter 310, 2016 General Session

49-11-1205 Postretirement reemployment restriction exceptions.

- (1)
 - (a) The office may not cancel the retirement allowance of a retiree who is reemployed with a participating employer within one year of the retiree's retirement date if:
 - (i) the retiree is not reemployed by a participating employer for a period of at least 60 days from the retiree's retirement date;
 - (ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree does not receive any employer paid benefits, including:
 - (A) retirement service credit or retirement-related contributions;
 - (B) medical benefits;
 - (C) dental benefits;
 - (D) other insurance benefits except for workers' compensation as provided under Title 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease Act, and withholdings required by federal or state law for social security, Medicare, and unemployment insurance; or
 - (E) paid time off, including sick, annual, or other type of leave; and

- (iii) the retiree does not earn in any calendar year of reemployment an amount in excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the retiree's retirement allowance is based.
- (b) Beginning January 1, 2013, the board shall adjust the amounts under Subsection (1)(a)(iii) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (2) A retiree shall be considered as having completed the one-year separation from employment with a participating employer required under Section 49-11-1204, if the retiree:
 - (a) before retiring:
 - (i) was employed with a participating employer as a public safety service employee as defined in Section 49-14-102, 49-15-102, or 49-23-102;
 - (ii) and during the employment under Subsection (2)(a)(i), suffered a physical injury resulting from external force or violence while performing the duties of the employment, and for which injury the retiree would have been approved for total disability in accordance with the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of service are not considered;
 - (iii) had less than 30 years of service credit but had sufficient service credit to retire, with an unreduced allowance making the public safety service employee ineligible for long-term disability payments under Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program; and
 - (iv) does not receive any long-term disability benefits from any participating employer; and
 - (b) is reemployed by a different participating employer.
- (3)
 - (a) The office may not cancel the retirement allowance of a retiree who is employed as an affiliated emergency services worker within one year of the retiree's retirement date if the affiliated emergency services worker does not receive any compensation, except for:
 - (i) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money or cash equivalent payment not tied to productivity and paid periodically for services;
 - (ii) a length-of-service award;
 - (iii) insurance policy premiums paid by the participating employer in the event of death of an affiliated emergency services worker or a line-of-duty accidental death or disability; or
 - (iv) reimbursement of expenses incurred in the performance of duties.
 - (b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax credits, vouchers, and payments to an affiliated emergency services worker may not exceed \$500 per month.
 - (c) Beginning January 1, 2016, the board shall adjust the amount under Subsection (3)(b) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4)
 - (a) If a retiree is reemployed under the provisions of Subsection (1) or (3), the termination date of the reemployment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Section 49-11-1204.
 - (b) The office shall cancel the retirement allowance of a retiree for the remainder of the calendar year if the reemployment with a participating employer exceeds the limitation under Subsection (1)(a)(iii) or (3)(b).

Enacted by Chapter 310, 2016 General Session

49-11-1206 Notice of postretirement reemployment.

- (1) A participating employer shall immediately notify the office:
 - (a) if the participating employer reemploys a retiree;
 - (b) whether the reemployment is subject to Section 49-11-1204 or Subsection 49-11-1205(1), (2), or (3); and
 - (c) of any election by the retiree under Section 49-11-1204.
- (2) A participating employer shall certify to the office whether the position of an elected official is or is not full time.
- (3) A retiree subject to this part shall report to the office the status of the reemployment under Section 49-11-1204 or 49-11-1205.

Enacted by Chapter 310, 2016 General Session

Amended by Chapter 310, 2016 General Session, (Coordination Clause)

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

- (1)
 - (a) If the office receives notice or learns of the reemployment of a retiree in violation of Section 49-11-1204 or 49-11-1205, the office shall:
 - (i) immediately cancel the retiree's retirement allowance;
 - (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar year if the reemployment with a participating employer exceeded the limitation under Subsection 49-11-1205(1)(a)(iii) or (3)(b); and
 - (iii) recover any overpayment resulting from the violation in accordance with the provisions of Section 49-11-607 before the allowance may be reinstated.
 - (b) Reinstatement of an allowance following cancellation for a violation under this section is subject to the procedures and provisions under Section 49-11-1204.
- (2) If a retiree or participating employer failed to report reemployment in violation of Section 49-11-1206, the retiree, participating employer, or both, who are found to be responsible for the failure to report, are liable to the office for the amount of any overpayment resulting from the violation.
- (3) A participating employer is liable to the office for a payment or failure to make a payment in violation of this part.
- (4) If a participating employer fails to notify the office in accordance with Section 49-11-1206, the participating employer is immediately subject to a compliance audit by the office.

Enacted by Chapter 310, 2016 General Session

49-11-1208 Rulemaking.

The board may make rules to implement this part.

Enacted by Chapter 310, 2016 General Session

Part 13

Phased Retirement

Effective 1/1/2017

49-11-1301 Definitions.

As used in this part:

- (1) "Amortization rate" means the amortization rate, as defined in Section 49-11-102, to be applied to the system that would have covered the retiree if the retiree's part-time position were considered to be an eligible, full-time position within that system.
- (2) "Full-time" means a:
 - (a) regular full-time employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 40 hours or more per week and who receives benefits normally provided by the participating employer;
 - (b) teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches full time;
 - (c) firefighter service employee whose employment normally requires an average of 2,080 hours of regularly scheduled firefighter service per year; and
 - (d) public safety service employee whose employment normally requires an average of 2,080 hours of regularly scheduled public safety service per year.
- (3) "Half-time" means a:
 - (a) regular employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours per week and who receives benefits normally provided by the participating employer;
 - (b) teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half time;
 - (c) firefighter service employee whose employment normally requires an average of 1,040 hours of regularly scheduled firefighter service per year; and
 - (d) public safety service employee whose employment normally requires an average of 1,040 hours of regularly scheduled public safety service per year.
- (4) "Phased retirement" means continuing employment on a half-time basis of a retiree with the same participating employer immediately after the retiree's retirement date while the retiree receives a reduced retirement allowance.

Enacted by Chapter 280, 2016 General Session

Effective 1/1/2017

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

A participating employer may elect to participate in phased retirement for a retiree who has not completed the one-year employment separation requirement under Section 49-11-1204 under the conditions established under this part, if the participating employer:

- (1) establishes written policies and procedures for phased retirement that shall include provisions for:
 - (a) granting and denying a request for phased retirement;
 - (b) needed approvals within the participating employer;
 - (c) time limits or other restrictions;
 - (d) identifying positions that may be included or excluded; and

- (e) the elements of a written agreement described under Section 49-11-1304;
- (2) enters into an agreement described under Section 49-11-1304;
- (3) submits an application to the office for phased retirement on behalf of the parties of the agreement described under Section 49-11-1304; and
- (4) complies with this part.

Enacted by Chapter 280, 2016 General Session

Amended by Chapter 310, 2016 General Session, (Coordination Clause)

Effective 1/1/2017

49-11-1303 Phased retirement -- Eligibility -- Restrictions -- Amortization rate.

- (1) A retiree is eligible for employment with only one position for only one participating employer under phased retirement following the retiree's retirement date if:
 - (a) the retiree:
 - (i) is eligible to retire and retires in accordance with this title;
 - (ii) has been employed full time, for not less than four years immediately before the retiree's retirement date;
 - (iii) completes and submits all required retirement forms to the office; and
 - (iv) completes and submits any phased retirement forms required by rules established under Section 49-11-1308; and
 - (b) the retiree and the participating employer enter into an agreement described under Section 49-11-1304.
- (2) For the period of the phased retirement:
 - (a) the retiree receives 50% of the retiree's monthly allowance;
 - (b) the participating employer employs the retiree on a half-time basis;
 - (c) a participating employer that employs the retiree shall contribute to the office the amortization rate;
 - (d) the retiree may not receive an annual cost-of-living adjustment to the retiree's allowance;
 - (e) any death benefits payable to a surviving spouse or other beneficiary shall be paid based on 100% of the retiree's retirement allowance;
 - (f) the retiree may not receive any employer provided retirement benefits, service credit accruals, or any retirement related contributions from the participating employer; and
 - (g) except as specified under this section, a retiree working under phased retirement shall be treated in the same manner as any other part-time employee working a similar position and number of hours with the participating employer, including:
 - (i) any non-retirement related benefits;
 - (ii) leave benefits;
 - (iii) medical benefits; and
 - (iv) other benefits.

Enacted by Chapter 280, 2016 General Session

Effective 1/1/2017

49-11-1304 Phased retirement agreements.

- (1) The participating employer and a willing and eligible retiree shall enter into a written agreement to participate in phased retirement.
- (2) The agreement shall specify the period of the phased retirement and, at the discretion of the agreeing parties, address:

- (a) hours of work;
- (b) job duties; and
- (c) other arrangements related to the employment.

Enacted by Chapter 280, 2016 General Session

Effective 1/1/2017

49-11-1305 Reporting -- Penalties.

- (1)
 - (a) A participating employer shall, within five business days, notify the office if the participating employer enters a phased retirement agreement with a retiree.
 - (b) A participating employer shall report to the office any change in status of the phased retirement in accordance with rules established under Section 49-11-1308.
 - (c) If a participating employer fails to notify the office in accordance with this section, the participating employer is immediately subject to a compliance audit by the office.
- (2)
 - (a) A retiree who has entered into phased retirement agreement under this section shall report to the office the phased retirement agreement in accordance with rules established under Section 49-11-1308.
 - (b) If the retiree fails to report to the office as required under this section, the office shall withhold one month's allowance for each month the retiree fails to make the report, in a timely manner, required under Subsection (2)(a).
- (3) If a retiree receives a retirement allowance or portion of a retirement allowance in error or in violation of this part:
 - (a) the office shall cancel the retiree's retirement allowance; and
 - (b) the office shall recover any overpayment in accordance with Section 49-11-607.
- (4) If a retiree or participating employer violates this part, including a failure to report in accordance with this section, the retiree, participating employer, or both that are found to be responsible for the violation are liable to the office for the amount of any allowance overpayment, failure to make a required payment or contribution, or other amount needed to correct an error or incorrect benefit resulting from the violation.

Enacted by Chapter 280, 2016 General Session

Effective 1/1/2017

49-11-1306 Reset of one year separation.

If a retiree is employed under phased retirement under this section, the termination date of the phased retirement employment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Subsection 49-11-1204(2).

Enacted by Chapter 280, 2016 General Session

Amended by Chapter 310, 2016 General Session, (Coordination Clause)

Effective 1/1/2017

49-11-1307 Phased retirement -- Adjustments or termination.

- (1) The Legislature may make adjustments to or terminate the phased retirement option created under this part, including:

- (a) amending phased retirement eligibility, restrictions, scope, or duration provisions;
 - (b) closing phased retirement to additional retirees; or
 - (c) terminating phased retirement for all participating retirees.
- (2) A participating employer and retiree enter into a phased retirement agreement subject to the adjustments or termination reserved in this section.

Enacted by Chapter 280, 2016 General Session

Effective 1/1/2017

49-11-1308 Rulemaking.

The board may make rules to implement this part.

Enacted by Chapter 280, 2016 General Session

Part 14

Forfeiture of Retirement Benefits

49-11-1401 Forfeiture of retirement benefits for employees for employment related offense convictions -- Notifications -- Investigations -- Appeals.

(1) As used in this section:

- (a) "Convicted" means a conviction by plea or by verdict, including a plea of guilty or a plea of no contest that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge was, or is, subsequently reduced or dismissed in accordance with the plea in abeyance agreement.
- (b) "Employee" means a member of a system or plan administered by the board.
- (c) "Employment related offense" means a felony committed during employment or the term of an elected or appointed office with a participating employer that is:
 - (i) during the performance of the employee's duties;
 - (ii) within the scope of the employee's employment; or
 - (iii) under color of the employee's authority.

- (2)
- (a) Notwithstanding any other provision of this title, an employee shall forfeit accrual of service credit, employer retirement related contributions, including employer contributions to the employer sponsored defined contribution plans, or other retirement related benefits from a system or plan under this title in accordance with this section.
 - (b) The forfeiture of retirement related benefits under Subsection (2)(a) does not include the employee's contribution to a defined contribution plan.
- (3) An employee shall forfeit the benefits described under Subsection (2)(a):
- (a) if the employee is convicted of an employment related offense;
 - (b) beginning on the day on which the employment related offense occurred; and
 - (c) until the employee is either:
 - (i) re-elected or reappointed to office; or
 - (ii)
 - (A) terminated from the position for which the employee was found to have committed an employment related offense; and

- (B) rehired or hired as an employee who is eligible to be a member of a Utah state retirement system or plan.
- (4) The employee's participating employer shall:
- (a) immediately notify the office:
 - (i) if an employee is charged with an offense that is or may be an employment related offense under this section; and
 - (ii) if the employee described in Subsection (4)(a)(i) is acquitted of the offense that is or may be an employment related offense under this section; and
 - (b) if the employee is convicted of an offense that may be an employment related offense:
 - (i) conduct an investigation, which may rely on the conviction, to determine:
 - (A) whether the conviction is for an employment related offense; and
 - (B) the date on which the employment related offense was initially committed; and
 - (ii) after the period of time for an appeal by an employee under Subsection (5), immediately notify the office of the employer's determination under this Subsection (4)(b).
- (5) An employee may appeal the employee's participating employer's determination under Subsection (4)(b) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (6) Upon receiving a notification from a participating employer that the participating employer has made a determination under Subsection (4)(b) that the conviction was for an employment related offense, the office shall immediately forfeit any service credit, employer retirement related contributions, including employer contributions to the employer sponsored contribution plans, or other retirement related benefits accrued by or made for the benefit of the employee, beginning on the date of the initial employment related offense determined under Subsection (4)(b).
- (7) This section applies to an employee who is convicted on or after the effective date of this act for an employment related offense.
- (8) The board may make rules to implement this section.
- (9) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

Enacted by Chapter 413, 2016 General Session

ADDENDUM C

4815-1922-0020, v. 1

Prepared by:

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BEFORE THE UTAH STATE RETIREMENT BOARD

NEAL K. OSTLER,

Petitioner,

v.

UTAH STATE RETIREMENT BOARD,

Respondent.

FINAL ORDER

File #: 13-40R

Hearing Officer: Frank G. Noel

BACKGROUND

Based upon foregoing motions and decisions by the Adjudicative Hearing Officer, the Utah State Retirement Board ("Board") now issues this Final Order for the final disposition of the claims involved in this action.

On July 22, 2014, Salt Lake Community College filed a Motion for Summary Judgment against the Petitioner, seeking to be dismissed from the matter because Petitioner failed to timely file his claims against it and the claims are barred by the statute of limitations. Upon completion

of briefing the Adjudicative Hearing Officer issued an Order Granting SLCC's Motion for Summary Judgment on September 30, 2014. *See* Exhibit A.

On October 15, 2015, Petitioner filed a Motion for Summary Judgment and claimed that he is entitled as a matter of law to his vested pension benefits based on his participating employers' contributions. On November 5, 2015, the Board brought a Cross Motion for Summary Judgment seeking to deny Petitioner's Motion for Summary Judgment and grant its Motion as a matter of law because pursuant to the plain language of the statute including other provisions of Title 49 Petitioner is not eligible for a retirement allowance because he took a refund of member contributions. Upon completion of briefing and a hearing on the Motion, on _____, the Adjudicative Hearing Officer issued Findings of Fact, Conclusions of Law, and Order granting the Board's Cross Motion for Summary Judgment and denied Petitioner's Motion for Summary Judgment. *See* Exhibit B.

Accordingly, the Board determines that all claims brought by Petitioner in this action have been considered and dismissed. The Board therefore adopts the above-referenced decisions of the Adjudicative Hearing Officer, attached hereto, and incorporates them as the final action of the Board in this Final Order.

ORDER

IT IS HEREBY ORDERED that the foregoing **Order Granting SLCC's Motion for Summary Judgment and Findings of Undisputed Fact, Conclusions of Law, and Order** are adopted as the Final Order of the Utah State Retirement Board.

BOARD RECONSIDERATION

Within ten (10) days of a Board order, any party may file a written request for reconsideration stating the specific grounds upon which relief is requested as set forth in Utah

Code Ann. § 49-11-613. This filing for reconsideration is not a prerequisite for seeking judicial review of the order on review. The request for reconsideration shall be filed with the Board and one copy sent by mail to each party by the person making the request. The Board chairman or executive director shall issue a written order granting or denying the request within twenty (20) days of receipt. If no order is issued within twenty (20) days, the request is denied.

JUDICIAL REVIEW

If any party is aggrieved with the final Board order, that party may seek a judicial review within thirty (30) days after the date that the order constituting final Board action is issued. The appealing party shall name the Board and all other appropriate parties as respondents. The Utah Court of Appeals has jurisdiction to review all final Board actions resulting from formal proceedings. All parties shall follow the procedures established in Utah Code Ann. § 63G-4-101 et. seq.

DATED this 9 day of Feb., 2016.



~~J. Dennis Frederick~~
Adjudicative Hearing Officer

Frank E. Noz

DATED this 18 day of Feb, 2016.

UTAH STATE RETIREMENT BOARD

BY Sheri K. Nelson
Sheri K. Nelson
Board President

CERTIFICATE OF MAILING

I hereby certify that on this 19th day of February, 2016, I mailed a true and correct copy of the above **Final Order** postage pre-paid, to the following:

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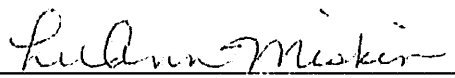

LuAnnn Miskin
Hearing Officer Administrative Assistant

Exhibit A

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BEFORE THE UTAH STATE RETIREMENT BOARD

NEAL K. OSTLER

Petitioner,

vs.

UTAH STATE RETIREMENT BOARD

Respondent.

**ORDER
GRANTING SLCC'S MOTION FOR
SUMMARY JUDGMENT**

File No. 13-25R

Hearing Officer: Noel

Having considered the Motion for Summary Judgment filed by Salt Lake Community College and the briefs filed in support and opposition thereto, the Hearing Officer grants the Motion and dismisses SLCC from this matter.

The following facts are undisputed: Petitioner Neal Ostler was employed by SLCC in various capacities as an employee from 1992-1998. He was never enrolled in any retirement plan while at SLCC. Mr. Ostler filed a 2nd Amended Complaint against SLCC in Third District Court on January 8, 2001 complaining of never having been enrolled in a retirement plan while at

SLCC. That matter was dismissed on Motion for Summary Judgment on June 17, 2003.¹ Mr. Ostler retired in April of 2013 and filed this matter on or about July 30, 2013.

The sole question before this forum is whether Mr. Ostler has timely filed his claim or whether his claim is barred by the statute of limitations or the doctrine of laches. It is clear that the applicable statute of limitations in this matter is the three year statute found in Utah Code Ann. § 78B-2-305(4).

Hearing officers in this instant forum have ruled in other matters that under similar circumstances the statute of limitations may begin to run before the actual date of retirement, specifically when the contributions by the employer become due under Title 49. Under that Title an employer who fails to make the required contributions for an eligible employee within 60 days of the end of the pay period is then liable to the retirement office for the delinquent payments, plus interest, plus a 12% per annum penalty on the amount of the delinquent payments. (Sec. 49-11-601(3))

There are no Utah appellate cases on point. This hearing officer is of the opinion that the better reasoned cases from other jurisdictions² hold that the statute of limitations begins to run when the employer fails to make the contributions required under the statute and when the employee reasonably learns of this failure by his employer. To hold otherwise could result in substantial problems in subsequent litigation and would defeat the purpose of the statute of limitations. A ruling that the statute does not begin to run until the employee's "retirement" or

¹Importantly, the hearing officer in this matter has ruled that the Third District Court did not have jurisdiction to hear the relevant claims in that action.

²See, e.g., *Bailey v. Shelby County*, 2013 WL 2149734 (Tenn. Ct. App. 2013).

retirement age would allow a claimant to sit on his claim for literally decades while penalties and interest continue to accrue, documents are lost, memories fade, personnel change, disappear or pass away. It is not difficult to imagine the problems in presenting a case for either the employer or employee after it has been allowed to sit for decades. Indeed a ruling that a claim did not ripen until retirement could create a substantial injustice to an employee who must under some circumstances determine whether or not to stay with an employer and must plan for his/her retirement.


Even if the equitable discovery rule were to apply in this case it does not help petitioner. It is clear on this record that Ostler knew that he was not enrolled in a retirement plan at SLCC, and that contributions were not being made in his behalf, at least as early as January 2001 when he filed his 2nd Amended Complaint in District Court making just such allegations. He then waited over 12 years to file this matter. Nor does the savings statute in Utah Code Ann. § 78B-2-111 help Petitioner. That statute, if construed most favorably to Petitioner, would have allowed him only until 2004 at the latest to file his claim.

The hearing officer is also of the opinion that to the extent there are equitable claims they are barred by the doctrine of laches. Interpreting all of the facts that make up the record in this case most favorably to Petitioner it is clear that he has sat on his claims for almost 10 years and that this delay could cause unnecessary injury to SLCC. To allow a claimant to delay an action for decades could result in unfair penalties to a defendant and would certainly defeat the purpose of reaching a just and speedy resolution of disputes.

In summary the hearing officer is of the opinion that to allow an employee to delay bringing an action under these circumstances, until the date of the employee's retirement would frustrate in the extreme the purpose of the applicable statute of limitations.

For the reasons stated above, SLCC's Motion for Summary Judgment is granted.

DATED this 30 day of September, 2014.



The Honorable Frank Noel
Hearing Officer

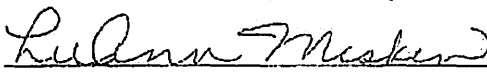
CERTIFICATE OF MAILING

I hereby certify that on the 1st day of October 2014, I emailed a true and correct copy of the foregoing Order Granting SLCC's Motion for Summary Judgment to the following:

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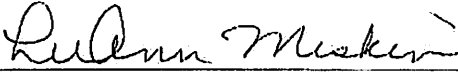

LuAnn Miskin

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of December, 2015, I mailed a true and correct copy of the foregoing Order to Memorandum Decision on Petitioner's Motion for Summary Judgment and Respondent's Cross Motion for Summary Judgment, postage prepaid, to the following:

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LuAnn Miskin

Exhibit B

Prepared by:

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BEFORE THE UTAH STATE RETIREMENT BOARD	
NEAL K. OSTLER, Petitioner, v. UTAH STATE RETIREMENT BOARD, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER File #: 13-40R Hearing Officer: Frank G. Noel

A hearing was held on December 17, 2015, before the Adjudicative Hearing Officer on Petitioner's Motion for Summary Judgment and Respondent's Cross Motion for Summary Judgment. Petitioner, Neal K. Ostler ("Mr. Ostler"), was represented by Florence M. Vincent of Prince, Yeates & Geldzahler. Respondent, the Utah State Retirement Board ("USRB"), was represented by Liza J. Eves. Based upon the testimony given, the evidence received and the legal memoranda submitted in this matter, the Adjudicative Hearing Officer issued a Memorandum Decision on December 18, 2015, and requested that counsel for the Respondent prepare an order. The Adjudicative Hearing Officer now makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Parties agreed to the following facts for purposes of the Motions for Summary Judgment:

1. Neal K. Ostler's ("Petitioner") claim is for pension benefits he is owed for service credits he earned while in the employ of various Utah governmental employers.
2. Petitioner was employed by the Salt Lake county Sherriff's Office ("Sheriff's Office") from August 14, 1972 through May 15, 1988. During this period, Petitioner took a leave of absence from October 9, 1973 through August 14, 1974.
3. Petitioner was employed by the Department of Corrections ("DOC") from May 16, 1988 through August 19, 1988.
4. Petitioner was employed by the Department of Commerce from August 22, 1988 through June 29, 1990.
5. Petitioner was employed by Davis Applied Technology from July 20, 1998 through October 14, 1999.
6. Petitioner was employed by Salt Lake City Corporation ("SLC") from November 3, 2003 through January 31, 2004.
7. Petitioner was employed by the Salt Lake Community College ("SLCC") from 1992 through 1998.
8. Each of the foregoing employers participate in the URS.
9. During Petitioner's employment with the Salt Lake County Sheriff's Office he was a member of the Public Safety Contributory Retirement System ("Safety Contributory System") codified at Title 49, Chapter 14 of the Utah Retirement and Insurance Benefit Act (the "Act"). See U.C.A. § 49-14-301. The Sheriff's Office and Petitioner made

contributions to the Safety Contributory System. Petitioner earned 14,906 years of service credits.

10. During Petitioner's employment with the DOC he continued as a member of the Safety Contributory System, and the DOC and Petitioner made contributions to URS. Petitioner earned 0.261 years of service credits.
11. Petitioner had a combined total of 15.167 years of service in the Safety Contributory System.
12. During Petitioner's employment with the Department of Commerce he was a member of the Public Employees Noncontributory Retirement System ("Public Noncontributory System") codified at Title 49, Chapter 13 of the Act. The Department of Commerce made contributions to the Public Noncontributory System. *See* U.C.A. § 49-13-205.
13. During Petitioner's employment with Davis Applied Technology he continued as a member of the Public Contributory System, and earned 1.230 years of service credit.
14. During Petitioner's employment with SLC he continued as a member of the Public Noncontributory System, and earned 0.161 years of service credit.
15. During Petitioner's employment with SLCC it participated in the Public Noncontributory System and determined eligibility for its employees to become members in the system based on whether an employee regularly worked more than 20 hours per week during his employment with SLCC. The Hearing Officer granted SLCC's motion for summary judgment dismissing Petitioner's claims for these missed contributions. The Hearing Officer's decision was based on his determination that a 3 year statute of limitation began to run when SLCC failed to make contributions and when Petitioner learned of this failure.

16. In August 1990, Petitioner requested and received separate refunds in the amount of \$26,262.00 and \$795.00 of his member share of retirement contributions paid during his employment with the Salt Lake County Sheriff's Office and the Department of Corrections.
17. The Application for Refund of Contributions provides a Notice which states in part:
- If you terminate coverage in one retirement system to accept employment in another system (i.e., terminate employment with the Firefighters' System to accept employment in the State System), you will not be issued a refund if the service in the terminated system is four or more years. (Employees with service in more than one system will have full-time service credits combined to qualify the individual for a benefit.) Earned benefits will be paid from each system using salaries in the last covered system as the basis for benefits.
18. Petitioner, in his 1996 Request for Board Action, provides that it was "understood by me that the funds would have to be re-deposited with interest before I would be eligible for those years of retirement service."
19. To date Petitioner has not re-deposited funds to URS.
20. USRB provides that Employer Contributions are held in the Public Employee's Contributory Retirement Trust Fund and the Public Safety Contributory Retirement Trust Fund. The Non-Elective Employer Contributions are held in the Public Employee's Noncontributory Retirement Trust Fund. The Member Contributions are separate from the Employer Contributions and the Non-Elective Employer Contributions are credited by URS to the account of the individual member.

CONCLUSIONS OF LAW

21. Petitioner has made a claim for retirement benefits for the time he participated in the Public Safety Contributory Retirement System. URS denied Petitioner's

claim citing to U.C.A. § 49-11-501(5) which states, "A member who receives a refund of member contributions forfeits the service credit based on those contributions."

22. Petitioner argues that based on the language in U.C.A. § 49-11-501(5) that a withdrawal or refund of his contributions requires him to forfeit only a portion of his retirement benefits. Petitioner points out that amounts contributed by the employer on his behalf remain in the system. However, Petitioner fails to provide any provision under the Act which would guide this hearing officer in determining the amount of a retirement benefit to which he is entitled under his interpretation of the statute. Petitioner argues that the portion which he would be entitled could be calculated either by reducing his retirement benefit equal to the amount he received as a refund, or in the alternative by using some proportional formula to arrive at the amounts of benefits to which he is entitled.
23. Respondent argues that under the plain language of the statute Petitioner forfeited all service credit based on the refund of member contributions and is not eligible for a retirement allowance until he makes a re-deposit of the amount of the refund plus interest pursuant to U.C.A. § 49-11-502(2) and (3).
24. Respondent argues that the plain language of the statute requires Petitioner to forfeit all retirement benefits since Petitioner's retirement plan is "contributory" and without his required contribution there can be no service credits earned. Respondent points out that the employer contributions remain in the system are used in the actuarial assumptions and calculations to arrive at rates and benefits for other members. Respondent relies primarily on the plain language of the statute but also argues that these assumptions have

always been used to calculate rates and benefits and that ruling on behalf of the Petitioner would drastically change the scheme they have been operating under for many years.

The rejoinder to that, of course, it is not Petitioner's fault or problem that Respondent may been using assumptions for many years that are based on a misinterpretation of the statute.

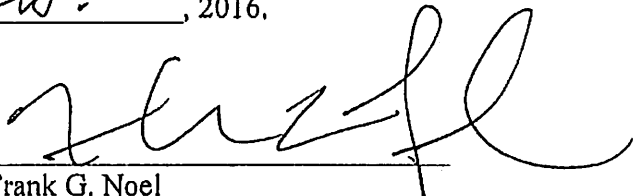
25. This matter boils down to statutory interpretation and the intent of the Legislature. Another statutory provision in dispute is U.C.A. § 49-11-102(50)(a) which defines "Service credit" as: "the period during which an employee is employed and compensated by a participating employer and meets the eligibility requirements for membership in a system . . . provided that any required contributions are paid to the office: . . ."
26. Petitioner argues that under U.C.A. § 49-11-102(50)(a) if any contributions are paid then a full service credit should be earned. If Petitioner's argument were accepted it would mean that under this contributory system if the employer paid its contributions and the member did not, then the member would still be entitled to his benefits. In addition, if for some reason the employer did not pay all its required contributions but only a fraction owed and the member paid none then Petitioner would still be entitled to all his benefits. The Hearing Officer does not find that these scenarios were the intent of the Legislature. Furthermore, the word "any" has reference to "required contributions". It may be possible that there may be contributions that are not required, or perhaps paid by someone other than the member, for instance the employer may pay the members contribution, but under this language any "required" contributions must be paid in full. The word "any" is not an invitation for an employer or employee to pay less than is required and still expect to receive full benefits.

27. Both parties have offered different interpretations of the same statutory provisions and it is important to look at the entire statutory scheme to determine the intent of the legislature and to interpret the disputed provisions in a manner consistent with that intent.
28. This hearing officer finds that having reviewed the entire statutory scheme the legislature clearly intended that if a member of the contributory system withdraws their contributions they forfeit all the service credits for the years those contributions were made. Furthermore, it is important to note that under the applicable statutory scheme both the employer and employee's contributions are required to earn service credits.
29. To adopt Petitioner's argument would allow a member, in essence, to convert what is clearly a contributory scheme into a version of a non-contributory scheme merely by deciding to withdraw all his/her member contributions at the time of retirement but then receive retirement benefits. This, in spite of the fact that those member contributions were required in order to be a member of the system. This, the Legislature did not intend. If the Legislature had intended otherwise, it would have clearly so stated and in the opinion of the Hearing Officer would have provided a method of calculation or at least some clear direction to determine benefits for a member who withdraws his/her contributions.
30. The contributory system and the non-contributory system each necessarily have their own set of assumptions and calculations in order for Respondent to meet the legislative mandate to operate the system according to financially and actuarially sound principles.

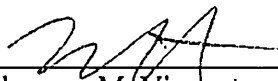
ORDER

IT IS HEREBY ORDERED: Petitioner is not entitled to judgment as a matter of law under Utah law, and the Board's Motion for Summary Judgment filed in conjunction with this Memorandum in Opposition is granted

DATED this 9 day of Feb., 2016.


Frank G. Noel
Adjudicative Hearing Officer

APPROVED AS TO FORM:


Florence M. Vincent
Counsel for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this the 9th day of February, 2016, I mailed a true and correct copy of the above **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**, postage pre-paid, to the following:

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