

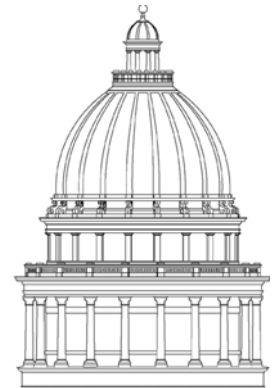
Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah

**REPORT NUMBER 2009-18**  
**December 2009**

## **A Performance Audit of Eligibility for Public Safety Retirement**

Our office reviewed the statutory eligibility requirements for membership in Utah's Public Safety Retirement (PSR) System and compared these requirements to position descriptions of current state employees enrolled in the PSR system. We found that statutory exceptions allow some employees to stay on PSR even though the employee's job would not be eligible for PSR. This report discusses the results of our review, as follows:

- We identified 12 positions with 37 employees on PSR that are questionable. The 12 positions identified in this report do not appear to meet all requirements for PSR membership. These positions include jobs without risk to life or personal safety and do not require peace officer standards and training (POST) certification. These positions raise a policy issue of reconsidering eligibility exceptions for the PSR system.
- PSR eligibility exceptions can be costly; the state contributes the equivalent of 30.18 percent of salary to the PSR fund for each employee member compared to 14.22 percent per employee to the Public Employees' Retirement System (PERS). The PSR system is based on a 20-year retirement, whereas PERS is based on a 30-year retirement.



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**Some employees earning Public Safety Retirement credits hold positions that do not meet all membership requirements.**

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**Other western states' statutes do not allow exceptions to public safety retirement membership requirements.**

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**Exceptions to PSR eligibility requirements could be reconsidered.**

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- While we identified positions of concern, we did find that the number of questionable state positions on the PSR system has declined since our office last reviewed this issue in 1988.

Current statutory language provides for some exceptions to the eligibility requirements for PSR membership. Statute allows continued PSR membership in cases where a POST-certified law enforcement employee is transferred or promoted to a non-law-enforcement position. In contrast to Utah's policy, other western states' policies require employees to be members in the retirement plan appropriate to the current position held, which requires moving them from public safety retirement to regular employee retirement plans as applicable. In our opinion, the statutory exceptions allowed in Utah could be reconsidered and PSR provisions revised to more closely resemble other states' retirement policies.

### **Exceptions for Eligibility in the Public Safety Retirement System Could Be Reconsidered**

The Legislature could reconsider allowable exceptions to the statutory eligibility requirements in order to restrict PSR membership to active-duty law enforcement personnel. The PSR system enrolls state and local government employees directly involved with law enforcement. Our review focused only on state law enforcement positions. Public safety employment is generally more stressful and hazardous than regular public service. Thus, PSR members receive enhanced benefits in recognition of their hazardous duty service. However, *Utah Code* includes a number of exceptions to the eligibility requirements. The exceptions have allowed continued enrollment of some employees who no longer meet all the statutory requirements for PSR participation.

An employee qualifies for PSR membership by meeting the following conditions:

- Holding a full-time position in a recognized public safety department
- Completing a certified peace officer training program
- Carrying out the primary duties of a peace officer, correctional officer, or special function officer

- Retaining employment that involves risk to life or personal safety

Because of the elevated risks in public safety jobs, PSR membership is restricted as shown above, and benefits are enhanced as well.

PSR benefits differ significantly from general retirement benefits. The PSR plan provides for member retirement at any age with 20 years of service rather than the 30 years required in PERS. The PSR plan also provides that years of service be multiplied by 2.5 percent times the final average salary for the first 20 years of work as opposed to the general 2.0 percent. To pay for these enhanced benefits, employer contribution rates are higher for employed PSR members. Employer contribution rates to PSR are presently 30.18 percent of salary per employee, compared to 14.22 percent for PERS.

Some exceptions to the enrollment restrictions allow PSR membership for employees who do not meet the requirements mentioned above. Specifically, *Utah Code* 49-11-201(8) states,

A public safety employee who is transferred or promoted to an administration position not covered by this system shall continue to earn public safety service credit in this system as long as the employee remains employed in the same department.

As will be discussed in the next section, these exceptions have permitted some state employees in uncertified, low-risk positions to earn public safety service credit.

### **Some Employees in Low-Risk Jobs Are Currently on the Public Safety Retirement Plan**

We found a number of employees (37) in state positions (12) on the PSR plan even though the jobs do not appear to pose elevated risk to life or safety and do not require POST certification. Employees in these positions have previous service as certified law enforcement officers. As previously stated, *Utah Code* addresses specific situations that allow employees to remain in the PSR system even though they were transferred or promoted into a position that would normally be considered ineligible for PSR benefits.

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**PSR benefits are more generous (therefore more expensive to the state) in recognition of the increased risks involved in law enforcement work.**

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**Some state employees on PSR hold low-risk jobs that do not require peace officer authority.**

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**PSR Enrollment of Ineligible Positions Has Decreased**

In reviewing current state positions on the PSR system, we found a reduction in PSR membership of employees in potentially ineligible positions when compared to our previous audit of the PSR system. Our 1988 audit found a total of 22 ineligible positions in various agencies with 50 employees enrolled in the PSR plan.

Looking at one of the agencies highlighted in the 1988 audit, the Department of Corrections (UDC) had 16 positions with 41 employees on the PSR system that were questionable. Our current review found that just one of the ineligible positions found in 1988 (Warehouse Worker) is still on PSR. In total, we found seven current potentially ineligible UDC positions with PSR-enrolled employees. Figure 1 lists the potentially ineligible positions and number of employees for UDC.

**Figure 1. This Audit Identified Seven PSR-Covered Positions in the Department of Corrections Potentially Not Meeting Statutory Eligibility Requirements.** Though these positions failed to meet the statutory criteria, the employees had previously worked in positions meeting PSR enrollment eligibility criteria.

Position Title	Employees
Auditor IV	1
Correctional Program Coordinator II	3
Office Specialist II	1
Program Administrator II	3
Senior Business Analyst	1
Warehouse Specialist	1
Warehouse Worker II	2
<b>7 Positions</b>	<b>12 Employees</b>

As previously noted, the 1988 audit identified 16 questionable positions with 41 UDC employees on the PSR system. As can be seen in Figure 1, the UDC has reduced ineligible employees and positions enrolled in PSR since the 1988 audit. Nonetheless, the positions listed in Figure 1 currently on PSR raise concerns about statutory exceptions for some employees who are transferred and/or promoted.

We asked administrators for the UDC and other relevant departments why employees in positions that did not meet the requirements for PSR enrollment were members of that system. UDC administrative staff provided documentation showing that the employees in all the corrections positions shown in Figure 1 held certified law enforcement positions at some point in their employment before taking the ineligible positions. As previously noted, a public safety service employee who is transferred or promoted to an administration position stays on PSR as long as the employee remains employed in the same department.

### **Some Exceptions at Corrections Raise Concerns**

In our view, some UDC exceptions raise concerns about the broad coverage of the transferred-or-promoted exception. Several examples will illustrate these concerns.

- Employee A was hired in January 1997 and held five uncertified positions before taking a POST-certified purchasing agent position. In our opinion, this position never should have been POST certified. After less than five years, the certified position was reclassified to an uncertified business analyst position. To date, the employee held a certified position for less than five years and uncertified positions for more than eight years. The employee remains on PSR.
- Employee B was hired in early September 2002 as a certified correctional officer. Less than seven months later, the employee was demoted (mid-March 2003) to an uncertified warehouse worker. Though demoted from a certified position, the individual remains on PSR.
- Employee C was hired in January 1985, held four uncertified positions until July 1991, and then held a certified trainer position until mid-September 1997. The employee was then promoted to an uncertified auditor position, held to the present. With more than 14 years in uncertified positions compared to six years in a certified position, the individual remains on PSR.

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**The corrections employees reviewed held certified law enforcement positions at some point in their careers.**

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**Some exceptions allow accrual of PSR service credits in cases where the majority of an employee's service has been spent in uncertified positions.**

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**Statutory exceptions to PSR membership could be reviewed and reconsidered.**

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**The positions we reviewed at Parks and Recreation were held by certified peace officers who were promoted through the ranks.**

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These examples illustrate why the promotion or transfer exception currently in statute might need to be reconsidered. Several reviewed employees were promoted or transferred (and one demoted) to a position with just the minimal risks found in a typical office setting and no POST certification requirement. We question whether all such employees should remain on the PSR system.

**Some Exceptions Were Also Found at Natural Resources.** In addition to the concerning positions found in the UDC, we reviewed ineligible positions at the Department of Natural Resources (DNR). Five positions in DNR’s Division of Parks and Recreation (DPR) did not appear at first to meet all statutory eligibility requirements for PSR. According to DPR administration and DHRM records, the 25 employees in the five positions remained on PSR because they had previously held certified park ranger positions and had been promoted through the ranks.

As noted, the ineligible positions we reviewed in this audit were held by employees who had previously worked in certified law enforcement positions. We asked other western states how their retirement systems deal with transfers or promotions of certified law enforcement employees into positions in the general public employee retirement plans. Western states differ from Utah in their approach to retirement plan eligibility in these situations. Other states’ policies will be discussed in the next section of this report.

### **Legislature Could Consider Incorporating Other States’ Approach to PSR Transfers and Promotions**

Generally, western states differ from Utah in their approach to public safety retirement eligibility for certain employees. In our opinion, because of the higher cost of PSR benefits, the Legislature could consider adopting a similar approach to that used in other western states.

## Other States Move Employees Between Plans

As previously noted, Utah allows former law enforcement employees to remain on the PSR plan when they transfer or are promoted to administrative positions in the same department that no longer meet the statutory eligibility criteria. However, most western states we contacted reassign such employees to a regular employee retirement plan. These states' policies on transfers and promotions involving law enforcement employees are summarized in Figure 2.

**Figure 2. Most Western States Switch a Certified Employee from the Public Safety Plan to a Regular Retirement Plan if the Employee Takes a Position Not Meeting Public Safety Eligibility Requirements.** Utah's policy of allowing employees who transfer or are promoted to non-law enforcement positions to stay on PSR differs from the policies of most western states.

State	Policy	Exceptions
Arizona	Change retirement plans	No
Colorado	Change retirement plans	No
Idaho	Change retirement plans	No
Nevada*	Change retirement plans with <20 years' service, remain on public safety with >20 years	Same department promotions
New Mexico	Change retirement plans; if >3 years in 2 plans, higher benefit plan will be used at retirement	Yes, see policy at left
Oregon	Change retirement plans	No
Washington	Change retirement plans	No
Wyoming	Change retirement plans	No
<b>Utah</b>	<b>Stay on PSR plan if promoted or transferred within the department</b>	<b>Yes</b>

*In Nevada, public safety officials can retire at any age with 25 years of service.*

Six of the eight western states automatically change plans when employees transfer or are promoted out of law enforcement duty. Although employees may be moved from a PSR to a PERS plan, other western states' retirement plan administrators indicated that they use conversion formulas that factor in service in more than one plan. Thus, employees are given credit for the higher contributions made to their PSR plans during their active duty.

**Most western states do not allow exceptions to eligibility requirements for PSR.**

Two states, New Mexico and Oregon, generally determine benefits based on the plan an employee was in at the time of retirement. New Mexico's statute, however, also provides that if an employee has more than three years' service in two retirement plans, the plan with higher benefits is used even if the employee retires while a member of the regular employees' retirement plan.

Most (75 percent) of the contacted retirement administrators in the western states stated there were no exceptions to the rule of changing plans. Nevada indicated that promotions within the same department allow employees to remain on PSR. PSR in Nevada allows a public safety employee to retire at any age with 25 years of service. New Mexico provides for an exception, as described in the preceding paragraph.

### **Allowing Exceptions Increases State Costs**

There is a cost to the state in the more generous benefits paid by PSR compared to those paid by Utah's PERS. In fact, the state's contribution to PSR is roughly double that to PERS, because the employer contribution rate to PSR is currently 30.18 percent of an employee's salary as compared to 14.22 percent for PERS.

To illustrate, the employer contribution to PERS for a full-time employee making \$22.25 per hour would be \$253 per pay period (about \$6,581 per year). The employer contribution to PSR for the same employee would be \$537 per pay period, or about \$13,967 per year.

**Modifying Utah's Policy Would Involve Some Additional Oversight Activity.** If the Legislature decides to modify any of the statutory provisions allowing the exceptions discussed in this report, the Utah Retirement Systems (URS) will be responsible for ensuring that agencies comply with the revisions. According to *Utah Code* 49-15-201(5)(a)(i) and (ii),

Each participating employer participating in this system shall annually submit to the office [URS] a schedule indicating the positions to be covered under this system [PSR] in accordance with this chapter. The office may require documentation to justify the inclusion of any position under this system.

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**The state pays an employer contribution rate for PSR employees that is twice as high as the rate paid to PERS, so exceptions should be carefully considered.**

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The statute goes on to provide a role for POST in case of an eligibility dispute between URS and the employer or employee. The position would be submitted to the POST council for a determination. However, because URS generally approves the positions submitted annually by agencies, there are no disputes on record at POST.

**Legislature Could Consider Adopting Other States' Approach.**

Both the higher cost of Utah's contribution rate to PSR and the high percentage of western states that reassign employees to the appropriate retirement plan suggest modifying Utah's policy. We believe that the Legislature could consider adopting an approach similar to other western states' policies when public safety employees are transferred or promoted to administrative or other non-law-enforcement positions. The URS already has a process in place to convert the calculation of benefits for employees who move between public employee and public safety retirement plans to ensure proper credit for services rendered.

## **Recommendation**

1. We recommend that the Legislature consider modifying current Public Safety Retirement plan provisions by requiring public safety employees to switch to the Public Employees Retirement System when they leave law-enforcement-related positions for uncertified positions that do not meet PSR eligibility requirements (primary duties in law enforcement, elevated risk to life and safety, and peace officer certification).

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## **Agency Response**

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## Utah Retirement Systems

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JEFFREY L. JENSEN  
Director

December 10, 2009

Mr. John A. Schaff, CIA  
Auditor General  
Office of the Legislative Auditor General  
W315 Utah State Capitol Complex  
Salt Lake City, UT 84114-5315

Dear Mr. Schaff:

Utah Retirement Systems (URS) has been provided a copy of **A Performance Audit of Eligibility for Public Safety Retirement** (Audit Report), Report No. 2009-18. URS appreciated the opportunity to review the Audit Report and make comments, as appropriate. Based upon the information contained in the Audit Report, URS believes the auditors have correctly understood the statute as it relates to eligibility for participation in Public Safety Retirement (PSR).

The Audit Report contains one recommendation to the legislature. This recommendation is to modify the statute, moving a member to the Public Employees Retirement System from PSR if they are employed in an uncertified position that does not meet PSR eligibility requirements. This is a policy decision of the legislature. URS will administer retirement eligibility as established by statute, and ensure that members are participating in the appropriate retirement system for which they are eligible, based upon the position in which they are employed.

Please contact URS if we can provide additional information.

Sincerely,



Robert V. Newman  
Executive Director  
UTAH RETIREMENT SYSTEMS