

1 **EMPLOYEE BENEFIT AMENDMENTS**

2 2008 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: John Dougall**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah State Retirement and Insurance Benefit Act by allowing the
10 transfer of certain members' defined benefit balance to a defined contribution plan, by
11 adding certain employees who may elect to be excluded from membership in the public
12 employees retirement systems.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines certain terms;
- 16 ▶ allows certain elected state officials and certain appointed executives and senior staff
17 to elect to have the members' defined benefit balance transferred from the defined
18 benefit system or plan to a defined contribution plan;
- 19 ▶ allows certain employees to be excluded, upon written request, from future coverage
20 under the Public Employees' Contributory Retirement System and the Public
21 Employees' Noncontributory Retirement System, including employees of the
22 Commission on Criminal and Juvenile Justice, employees of the governor's offices,
23 and employees of the state treasurer and state auditor; and
- 24 ▶ makes technical changes.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill provides an immediate effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **49-11-102**, as last amended by Laws of Utah 2007, Chapters 130, 252, and 329

32 **49-11-801**, as renumbered and amended by Laws of Utah 2002, Chapter 250

33 **49-12-203**, as last amended by Laws of Utah 2007, Chapters 192 and 306

34 **49-13-203**, as last amended by Laws of Utah 2007, Chapters 192 and 306

35 ENACTS:

36 **49-11-406**, Utah Code Annotated 1953



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

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

40 **49-11-102. Definitions.**

41 As used in this title:

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

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

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

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

50 (4) (a) "Agency" means:

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

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

54 (iii) a state college or university; or

55 (iv) any other participating employer.

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

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

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

62 (7) "Annuity" means monthly payments derived from member contributions.

63 (8) "Appointive officer" means an employee appointed to a position for a definite and
64 fixed term of office by official and duly recorded action of a participating employer whose
65 appointed position is designated in the participating employer's charter, creation document, or
66 similar document, and who earns during the first full month of the term of office \$500 or more,
67 indexed as of January 1, 1990, as provided in Section 49-12-407.

68 (9) (a) "At-will employee" means a person who is employed by a participating employer
69 and:

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

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

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

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

80 [~~9~~] (10) "Beneficiary" means any person entitled to receive a payment under this title
81 through a relationship with or designated by a member, participant, covered individual, or
82 alternate payee of a defined contribution plan.

83 [~~10~~] (11) "Board" means the Utah State Retirement Board established under Section
84 49-11-202.

85 [~~11~~] (12) "Board member" means a person serving on the Utah State Retirement

86 Board as established under Section 49-11-202.

87 ~~[(12)]~~ (13) "Contributions" means the total amount paid by the participating employer
88 and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under
89 Chapter 19, Utah ~~[Governor's]~~ Governors' and Legislators' Retirement Act.

90 ~~[(13)]~~ (14) "Council member" means a person serving on the Membership Council
91 established under Section 49-11-202.

92 ~~[(14)]~~ (15) "Covered individual" means any individual covered under Chapter 20, Public
93 Employees' Benefit and Insurance Program Act.

94 ~~[(15)]~~ (16) "Current service" means covered service as defined in Chapters 12, 13, 14,
95 15, 16, 17, 18, and 19.

96 (17) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a
97 system or plan offered under this title to provide a specified allowance to a retiree or a retiree's
98 spouse after retirement that is based on a set formula involving one or more of the following
99 factors:

100 (a) years of service;

101 (b) final average monthly salary; or

102 (c) a retirement multiplier.

103 ~~[(16)]~~ (18) "Defined contribution" or "defined contribution plan" means any defined
104 contribution plan authorized under the Internal Revenue Code and administered by the board.

105 ~~[(17)]~~ (19) "Educational institution" means a political subdivision or instrumentality of
106 the state or a combination thereof primarily engaged in educational activities or the
107 administration or servicing of educational activities, including:

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

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

110 (c) any school district and its instrumentalities;

111 (d) any vocational and technical school; and

112 (e) any entity arising out of a consolidation agreement between entities described under
113 this Subsection ~~[(17)]~~ (19).

114 [~~18~~] (20) (a) "Employer" means any department, educational institution, or political
115 subdivision of the state eligible to participate in a government-sponsored retirement system
116 under federal law.

117 (b) "Employer" may also include an agency financed in whole or in part by public funds.

118 [~~19~~] (21) "Exempt employee" means an employee working for a participating
119 employer:

120 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,
121 49-14-203, 49-15-203, or 49-16-203; and

122 (b) for whom a participating employer is not required to pay contributions or
123 nonelective contributions.

124 [~~20~~] (22) "Final average monthly salary" means the amount computed by dividing the
125 compensation received during the final average salary period under each system by the number
126 of months in the final average salary period.

127 [~~21~~] (23) "Fund" means any fund created under this title for the purpose of paying
128 benefits or costs of administering a system, plan, or program.

129 [~~22~~] (24) (a) "Inactive member" means a member who has not been employed by a
130 participating employer for a period of at least 120 days.

131 (b) "Inactive member" does not include retirees.

132 [~~23~~] (25) (a) "Member" means a person, except a retiree, with contributions on
133 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,
134 Utah Governors' and Legislators' Retirement Act, or with a terminated system.

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

141 [~~24~~] (26) "Member contributions" means the sum of the contributions paid to a

142 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if
143 allowed by a system, and which are made by:

144 (a) the member; and

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

147 [~~25~~] (27) "Nonelective contribution" means an amount contributed by a participating
148 employer into a participant's defined contribution account.

149 [~~26~~] (28) "Office" means the Utah State Retirement Office.

150 [~~27~~] (29) "Participant" means an individual with voluntary deferrals or nonelective
151 contributions on deposit with the defined contribution plans administered under this title.

152 [~~28~~] (30) "Participating employer" means a participating employer, as defined by
153 Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public
154 funds which is participating in a system or plan as of January 1, 2002.

155 [~~29~~] (31) "Pension" means monthly payments derived from participating employer
156 contributions.

157 [~~30~~] (32) "Plan" means the Utah Governors' and Legislators' Retirement Plan created
158 by Chapter 19, Utah Governors' and Legislators' Retirement Act, or the defined contribution
159 plans created under Section 49-11-801.

160 [~~31~~] (33) (a) "Political subdivision" means any local government entity, including
161 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is
162 legally separate and distinct from the state and only if its employees are not by virtue of their
163 relationship to the entity employees [or] of the state.

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

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

168 [~~32~~] (34) "Program" means the Public Employees' Insurance Program created under
169 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'

170 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term
171 Disability Act.

172 ~~[(33)]~~ (35) "Public funds" means those funds derived, either directly or indirectly, from
173 public taxes or public revenue, dues or contributions paid or donated by the membership of the
174 organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the
175 governmental, educational, and social programs and systems of the state or its political
176 subdivisions.

177 ~~[(34)]~~ (36) "Qualified defined contribution plan" means a defined contribution plan that
178 meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

179 ~~[(35)]~~ (37) "Refund interest" means the amount accrued on member contributions at a
180 rate adopted by the board.

181 ~~[(36)]~~ (38) "Retiree" means an individual who has qualified for an allowance under this
182 title.

183 ~~[(37)]~~ (39) "Retirement" means the status of an individual who has become eligible,
184 applies for, and is entitled to receive an allowance under this title.

185 ~~[(38)]~~ (40) "Retirement date" means the date selected by the member on which the
186 member's retirement becomes effective with the office.

187 ~~[(39)]~~ (41) "Service credit" means:

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

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

193 ~~[(40)]~~ (42) "System" means the individual retirement systems created by Chapter 12,
194 Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'
195 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,
196 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement
197 Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory

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

199 [~~(41)~~] (43) "Voluntary deferrals" means an amount contributed by a participant into that
200 participant's defined contribution account.

201 Section 2. Section **49-11-406** is enacted to read:

202 **49-11-406. Governor's appointed executives and senior staff -- Appointed**
203 **legislative employees -- Transfer of value of accrued defined benefit -- Procedures.**

204 (1) As used in this section:

205 (a) "Defined benefit balance" means the total amount of the contributions made on
206 behalf of a member to a defined benefit system plus refund interest.

207 (b) "Senior staff" means an at-will employee who reports directly to an elected official,
208 executive director, or director and includes a deputy director and other similar, at-will employee
209 positions designated by the governor, the speaker of the House, or the president of the Senate
210 and filed with the Department of Human Resource Management and the Utah State Retirement
211 Office.

212 (2) In accordance with this section and subject to federal law, a member who has
213 service credit from a system may elect to be exempt from coverage under a defined benefit
214 system and to have the member's defined benefit balance transferred from the defined benefit
215 system or plan to a defined contribution plan in the member's own name if the member is:

216 (a) the state auditor;

217 (b) the state treasurer;

218 (c) an appointed executive under Subsection 67-22-2(1)(a);

219 (d) an employee in the Governor's Office;

220 (e) senior staff in the Governor's Office of Planning and Budget;

221 (f) senior staff in the Governor's Office of Economic Development;

222 (g) senior staff in the Commission on Criminal and Juvenile Justice;

223 (h) a legislative employee appointed under Subsection 36-12-7(3)(a); or

224 (i) a legislative employee appointed by the speaker of the House of Representatives, the
225 House of Representatives minority leader, the president of the Senate, or the Senate minority

226 leader.

227 (3) An election made under Subsection (2):

228 (a) is final, and no right exists to make any further election;

229 (b) is considered a request to be exempt from coverage under a defined benefits system;

230 and

231 (c) shall be made on forms provided by the office.

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

233 Section 3. Section **49-11-801** is amended to read:

234 **49-11-801. Defined contribution plans authorized -- Subject to federal and state**
235 **laws -- Rules to implement this provision -- Costs of administration -- Limitations on**
236 **eligibility -- Protection of tax status.**

237 (1) (a) The board [~~may~~] shall establish and administer defined contribution plans
238 established under the Internal Revenue Code.

239 (b) Voluntary deferrals and nonelective contributions shall be permitted according to
240 the provisions of these plans as established by the board.

241 (c) The defined contribution account balance is vested in the participant.

242 (2) (a) Voluntary deferrals and nonelective contributions shall be posted to the
243 participant's account.

244 (b) Participants may direct the investment of their account in the investment options
245 established by the board and in accordance with federal and state law.

246 (3) (a) The board may make rules and create plan documents to implement and
247 administer this section.

248 (b) The board may adopt rules under which a participant may put money into a defined
249 contribution plan as permitted by federal law.

250 (c) The office may reject any payments if the office determines the tax status of the
251 systems, plans, or programs would be jeopardized by allowing the payment.

252 (d) Costs of administration shall be paid as established by the board.

253 (4) Voluntary deferrals and nonelective contributions may be invested separately or in

254 conjunction with the Utah State Retirement Investment Fund.

255 (5) The board or office may take actions necessary to protect the tax qualified status of
256 the systems, plans, and programs under its control, including the movement of individuals from
257 defined contribution plans to defined benefit systems or the creation of excess benefit plans
258 authorized by federal law.

259 (6) The office may, at its sole discretion, correct errors made in the administration of its
260 defined contribution plans.

261 Section 4. Section **49-12-203** is amended to read:

262 **49-12-203. Exclusions from membership in system.**

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

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

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

270 (ii) if an employee, previously terminated prior to being eligible for service credit in this
271 system is reemployed within three months of termination by the same participating employer,
272 the participating employer shall report and certify that the member is a regular full-time
273 employee when the total of the periods of employment equals six months and the employee
274 otherwise qualifies for service credit in this system.

275 (b) (i) A current or future employee of a two-year or four-year college or university
276 who holds, or is entitled to hold, under Section 49-12-204, a retirement annuity contract with
277 the Teachers' Insurance and Annuity Association of America or with any other public or private
278 system, organization, or company during any period in which required contributions based on
279 compensation have been paid on behalf of the employee by the employer.

280 (ii) The employee, upon cessation of the participating employer contributions, shall
281 immediately become eligible for service credit in this system.

- 282 (c) An employee serving as an exchange employee from outside the state.
- 283 (d) An executive department head of the state, a member of the State Tax Commission,
284 the Public Service Commission, and a member of a full-time or part-time board or commission
285 who files a formal request for exemption.
- 286 (e) An employee of the Department of Workforce Services who is covered under
287 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.
- 288 (2) Upon filing a written request for exemption with the office, the following employees
289 shall be exempt from coverage under this system:
 - 290 (a) a full-time student or the spouse of a full-time student and individuals employed in a
291 trainee relationship;
 - 292 (b) an elected official;
 - 293 (c) an executive department head of the state [~~or a legislative director, senior executive~~
294 ~~employed by the governor's office~~], a member of the State Tax Commission, a member of the
295 Public Service Commission, and a member of a full-time or part-time board or commission;
296 [~~(d) an at-will employee who:~~
 - 297 [~~(i) is a person appointed by the speaker of the House of Representatives, the House of~~
298 ~~Representatives minority leader, the president of the Senate, or the Senate minority leader; or]~~
 - 299 [~~(ii) is an employee of the Governor's Office of Economic Development who has been~~
300 ~~hired directly from a position not covered by a system;]~~
 - 301 (d) an employee of the Governor's Office of Planning and Budget;
 - 302 (e) an employee of the Governor's Office of Economic Development;
 - 303 (f) an employee of the Commission on Criminal and Juvenile Justice;
 - 304 (g) an employee of the Governor's Office;
 - 305 (h) an employee of the State Auditor's Office;
 - 306 (i) an employee of the State Treasurer's Office;
 - 307 (j) any other member who is permitted to make an election under Section 49-11-406;
 - 308 [~~(e)~~] (k) a person appointed as a city manager or chief city administrator or another
309 person employed by a municipality, county, or other political subdivision, who is [~~not entitled to~~

310 ~~merit or civil service protection]~~ an at-will employee; and

311 [(~~f~~)] (1) an employee of an interlocal cooperative agency created under Title 11, Chapter
312 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided
313 through membership in a labor organization that provides retirement benefits to its members.

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

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

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

321 (b) A municipality, county, or political subdivision may exempt at least one regular
322 full-time employee.

323 (5) Each participating employer shall:

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

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

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

327 Section 5. Section **49-13-203** is amended to read:

328 **49-13-203. Exclusions from membership in system.**

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

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

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

336 (ii) if an employee, previously terminated prior to becoming eligible for service credit in
337 this system, is reemployed within three months of termination by the same participating

338 employer, the participating employer shall report and certify to the office that the member is a
339 regular full-time employee when the total of the periods of employment equals six months and
340 the employee otherwise qualifies for service credit in this system.

341 (b) (i) A current or future employee of a two-year or four-year college or university
342 who holds, or is entitled to hold, under Section 49-13-204, a retirement annuity contract with
343 the Teachers' Insurance and Annuity Association of America or with any other public or private
344 system, organization, or company during any period in which required contributions based on
345 compensation have been paid on behalf of the employee by the employer.

346 (ii) The employee, upon cessation of the participating employer contributions, shall
347 immediately become eligible for service credit in this system.

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

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

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

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

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

359 (b) an elected official;

360 (c) an executive department head of the state [~~or a legislative director, senior executive~~
361 ~~employed by the governor's office~~], a member of the State Tax Commission, a member of the
362 Public Service Commission, and a member of a full-time or part-time board or commission;

363 [~~(d) an at-will employee who:~~

364 [~~(i) is a person appointed by the speaker of the House of Representatives, the House of~~
365 ~~Representatives minority leader, the president of the Senate, or the Senate minority leader; or]~~

366 ~~[(ii) is an employee of the Governor's Office of Economic Development who has been~~
367 ~~hired directly from a position not covered by a system;]~~

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

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

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

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

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

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

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

375 ~~[(e)]~~ (k) a person appointed as a city manager or chief city administrator or another
376 person employed by a municipality, county, or other political subdivision, who is [not entitled to
377 merit or civil service protection] an at-will employee; and

378 ~~[(f)]~~ (l) an employee of an interlocal cooperative agency created under Title 11, Chapter
379 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided
380 through membership in a labor organization that provides retirement benefits to its members.

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

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

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

388 (b) A municipality, county, or political subdivision may exempt at least one regular
389 full-time employee.

390 (5) Each participating employer shall:

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

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

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

394 Section 6. **Effective date.**

395 If approved by two-thirds of all the members elected to each house, this bill takes effect
396 upon approval by the governor, or the day following the constitutional time limit of Utah
397 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
398 the date of veto override.