

1 **RETIREMENT PARTICIPATION MODIFICATIONS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Don L. Ipson**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah State Retirement and Insurance Benefit Act by providing for
10 the withdrawal of employees of a withdrawing entity.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines "withdrawing entity";
- 14 ▶ allows a withdrawing entity to make an election of continued participation or
15 withdrawal in a Utah retirement system or plan for future employees beginning on a
16 date, no later than January 1, ~~H→~~ **[2015] 2017 ←H** , determined by the withdrawing entity;
- 17 ▶ requires the withdrawing entity to pay any costs that arise out of the election of
18 nonparticipation;
- 19 ▶ provides for rulemaking by the Utah State Retirement Board;
- 20 ▶ excludes new employees of a withdrawing entity from participation in the Public
21 Employees' Contributory Retirement System, the Public Employees'
22 Noncontributory Retirement System, and the New Public Employees' Tier II
23 Contributory Retirement Act under certain circumstances; and
- 24 ▶ makes technical changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 [49-12-203](#), as last amended by Laws of Utah 2013, Chapters 310 and 316

32 [49-13-203](#), as last amended by Laws of Utah 2013, Chapters 310 and 316

33 [49-22-203](#), as last amended by Laws of Utah 2013, Chapter 316

34 ENACTS:

35 [49-11-623](#), Utah Code Annotated 1953

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

38 Section 1. Section [49-11-623](#) is enacted to read:

39 **[49-11-623. Withdrawing entity -- Participation election date -- Withdrawal costs](#)**

40 **-- Rulemaking.**

41 (1) As used in this section, "withdrawing entity" means an entity that:

42 (a) participates in a system or plan under this title prior to July 1, 2014;

43 (b) provides mental health and substance abuse services for a county under Section

44 [17-50-318](#); ~~H~~→ ~~[and]~~ ←~~H~~

45 (c) after beginning participation with a system or plan under this title, has modified its

46 federal tax status to a nonprofit organization that qualifies under Section 501(c)(3) of the

47 Internal Revenue Code ~~H~~→ [;] ; and

47a **(d) is not a state institution of higher education as described in Section 53B-2-101.** ←~~H~~

48 (2) Notwithstanding any other provision of this title, a withdrawing entity may provide

49 for the participation of its employees with that system or plan as follows:

50 (a) the withdrawing entity shall determine a date that is no later than January 1, ~~H~~→ **[2015]**

50a **2017** ←~~H~~ ,

51 on which the withdrawing entity shall make an election under Subsection (3); and

52 (b) the withdrawing entity shall pay to the office any ~~H~~→ **reasonable** ←~~H~~ actuarial and

52a administrative costs

53 determined by the office to have arisen out of an election made under this section.

54 (3) The withdrawing entity described under Subsection (2) may elect to:

55 (a) continue its participation for all current employees of the withdrawing entity, who

56 are covered by a system or plan as of the date set under Subsection (2)(a); and

57 (b) withdraw from participation in all systems or plans for all persons initially entering

58 employment with the withdrawing entity, beginning on the date set under Subsection (2)(a).

- 59 (4) (a) An election provided under Subsection (3):
 60 (i) is a one-time election made no later than the date specified under Subsection (2)(a);
 61 (ii) shall be documented by a resolution adopted by the governing body of the
 62 withdrawing entity;
 63 (iii) is irrevocable; and
 64 (iv) applies to the withdrawing entity as the employer and to all employees of the
 65 withdrawing entity.
 66 (b) Notwithstanding an election made under Subsection (3), any eligibility for service
 67 credit earned by an employee under this title before the date specified under Subsection (2)(a)
 68 is not affected by this section.
 69 (5) If a withdrawing entity elects to continue participation under Subsection (3), the
 70 withdrawing entity shall continue to be subject to the laws and the rules governing the system
 71 or plan in which an employee participates, including the accrual of service credit and payment
 72 of contributions.

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

74 Section 2. Section **49-12-203** is amended to read:

75 **49-12-203. Exclusions from membership in system.**

- 76 (1) The following employees are not eligible for service credit in this system:
 77 (a) subject to the requirements of Subsection (2), an employee whose employment
 78 status is temporary in nature due to the nature or the type of work to be performed;
 79 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
 80 education who participates in a retirement system with the Teachers' Insurance and Annuity
 81 Association of America or with any other public or private retirement system, organization, or
 82 company during any period in which required contributions based on compensation have been
 83 paid on behalf of the employee by the employer;
 84 (c) an employee serving as an exchange employee from outside the state;
 85 (d) an executive department head of the state, a member of the State Tax Commission,
 86 the Public Service Commission, and a member of a full-time or part-time board or commission
 87 who files a formal request for exemption;
 88 (e) an employee of the Department of Workforce Services who is covered under
 89 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act; [or]

90 (f) an employee who is employed on or after July 1, 2009 with an employer that has
91 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection
92 [49-12-202\(2\)\(c\)](#)[-]; or

93 (g) an employee who is employed with a withdrawing entity that has elected, prior to
94 January 1, ~~H~~→ [2015] 2017 ←~~H~~ , to exclude new employees from participation in this system under
94a Subsection
95 [49-11-623\(3\)](#).

96 (2) If an employee whose status is temporary in nature due to the nature of type of
97 work to be performed:

98 (a) is employed for a term that exceeds six months and the employee otherwise
99 qualifies for service credit in this system, the participating employer shall report and certify to
100 the office that the employee is a regular full-time employee effective the beginning of the
101 seventh month of employment; or

102 (b) was previously terminated prior to being eligible for service credit in this system
103 and is reemployed within three months of termination by the same participating employer, the
104 participating employer shall report and certify that the member is a regular full-time employee
105 when the total of the periods of employment equals six months and the employee otherwise
106 qualifies for service credits in this system.

107 (3) (a) Upon cessation of the participating employer contributions, an employee under
108 Subsection (1)(b) is eligible for service credit in this system.

109 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service
110 credit earned by an employee under this chapter before July 1, 2009 is not affected under
111 Subsection (1)(f).

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

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

116 (b) an elected official;

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

120 (d) an employee of the Governor's Office of Management and Budget;

- 121 (e) an employee of the Governor's Office of Economic Development;
- 122 (f) an employee of the Commission on Criminal and Juvenile Justice;
- 123 (g) an employee of the Governor's Office;
- 124 (h) an employee of the State Auditor's Office;
- 125 (i) an employee of the State Treasurer's Office;
- 126 (j) any other member who is permitted to make an election under Section 49-11-406;
- 127 (k) a person appointed as a city manager or chief city administrator or another person
- 128 employed by a municipality, county, or other political subdivision, who is an at-will employee;
- 129 and

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

133 (5) (a) Each participating employer shall prepare a list designating those positions
134 eligible for exemption under Subsection (4).

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

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

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

142 (7) Each participating employer shall:

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

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

145 (8) The office may make rules to implement this section.

146 Section 3. Section 49-13-203 is amended to read:

147 **49-13-203. Exclusions from membership in system.**

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

149 (a) subject to the requirements of Subsection (2), an employee whose employment
150 status is temporary in nature due to the nature or the type of work to be performed;

151 (b) except as provided under Subsection (3)(a), an employee of an institution of higher

152 education who participates in a retirement system with the Teachers' Insurance and Annuity
153 Association of America or with any other public or private retirement system, organization, or
154 company during any period in which required contributions based on compensation have been
155 paid on behalf of the employee by the employer;

156 (c) an employee serving as an exchange employee from outside the state;

157 (d) an executive department head of the state or a legislative director, senior executive
158 employed by the governor's office, a member of the State Tax Commission, a member of the
159 Public Service Commission, and a member of a full-time or part-time board or commission
160 who files a formal request for exemption;

161 (e) an employee of the Department of Workforce Services who is covered under
162 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act; ~~or~~

163 (f) an employee who is employed with an employer that has elected to be excluded
164 from participation in this system under Subsection 49-13-202(5), effective on or after the date
165 of the employer's election under Subsection 49-13-202(5); or

166 (g) an employee who is employed with a withdrawing entity that has elected, prior to
167 January 1, ~~2015~~ 2017 ~~←~~ , to exclude new employees from participation in this system
167a under Subsection
168 49-11-623(3).

169 (2) If an employee whose status is temporary in nature due to the nature of type of
170 work to be performed:

171 (a) is employed for a term that exceeds six months and the employee otherwise
172 qualifies for service credit in this system, the participating employer shall report and certify to
173 the office that the employee is a regular full-time employee effective the beginning of the
174 seventh month of employment; or

175 (b) was previously terminated prior to being eligible for service credit in this system
176 and is reemployed within three months of termination by the same participating employer, the
177 participating employer shall report and certify that the member is a regular full-time employee
178 when the total of the periods of employment equals six months and the employee otherwise
179 qualifies for service credits in this system.

180 (3) (a) Upon cessation of the participating employer contributions, an employee under
181 Subsection (1)(b) is eligible for service credit in this system.

182 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service

183 credit earned by an employee under this chapter before the date of the election under
184 Subsection 49-13-202(5) is not affected under Subsection (1)(f).

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

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

189 (b) an elected official;

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

193 (d) an employee of the Governor's Office of Management and Budget;

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

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

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

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

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

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

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

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

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

207 (5) (a) Each participating employer shall prepare a list designating those positions
208 eligible for exemption under Subsection (4).

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

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

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

216 (7) Each participating employer shall:

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

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

219 (8) The office may make rules to implement this section.

220 Section 4. Section **49-22-203** is amended to read:

221 **49-22-203. Exclusions from membership in system.**

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

223 (a) subject to the requirements of Subsection (2), an employee whose employment
224 status is temporary in nature due to the nature or the type of work to be performed;

225 (b) except as provided under Subsection (3), an employee of an institution of higher
226 education who participates in a retirement system with the Teachers' Insurance and Annuity
227 Association of America or with any other public or private retirement system, organization, or
228 company during any period in which required contributions based on compensation have been
229 paid on behalf of the employee by the employer;

230 (c) an employee serving as an exchange employee from outside the state; [or]

231 (d) an employee of the Department of Workforce Services who is covered under
232 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act[:]; or

233 (e) an employee who is employed with a withdrawing entity that has elected, prior to
234 January 1, ~~H~~→ [2015] 2017 ←~~H~~ , to exclude new employees from participation in this system
234a under Subsection

235 49-11-623(3).

236 (2) If an employee whose status is temporary in nature due to the nature of type of
237 work to be performed:

238 (a) is employed for a term that exceeds six months and the employee otherwise
239 qualifies for service credit in this system, the participating employer shall report and certify to
240 the office that the employee is a regular full-time employee effective the beginning of the
241 seventh month of employment; or

242 (b) was previously terminated prior to being eligible for service credit in this system
243 and is reemployed within three months of termination by the same participating employer, the
244 participating employer shall report and certify that the member is a regular full-time employee

245 when the total of the periods of employment equals six months and the employee otherwise
246 qualifies for service credits in this system.

247 (3) Upon cessation of the participating employer contributions, an employee under
248 Subsection (1)(b) is eligible for service credit in this system.

Legislative Review Note
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Office of Legislative Research and General Counsel