

Senator Deidre M. Henderson proposes the following substitute bill:

ANNUAL LEAVE PROGRAM II FOR STATE EMPLOYEES

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Deidre M. Henderson

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill modifies the Utah State Personnel Management Act by amending provisions for employee leave programs and creates the State Employees' Annual Leave Program II Trust Fund Act.

Highlighted Provisions:

This bill:

- ▶ defines "annual leave II" and "change date";
- ▶ provides that beginning on a date established by the Division of Finance that is no later than January 2, 2016, a state agency will offer annual leave II in lieu of annual leave to eligible state employees;
- ▶ provides that any unused annual leave accrued before a change date established by the Division of Finance that is no later than January 2, 2016, may be used under the same rules that applied to the leave on the change date;
- ▶ requires a state agency to set aside the cost of each hour of annual leave II for each eligible employee for deposit into the State Employees' Annual Leave Program II Trust Fund;
- ▶ provides for rulemaking authority; and
- ▶ enacts the State Employees' Annual Leave Program II Trust Fund Act, which creates



26 the State Employees' Annual Leave Program II Trust Fund and board and provides for
27 administration of the trust fund.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 ENACTS:

34 [67-19-14.6](#), Utah Code Annotated 1953

35 [67-19f-101](#), Utah Code Annotated 1953

36 [67-19f-102](#), Utah Code Annotated 1953

37 [67-19f-201](#), Utah Code Annotated 1953

38 [67-19f-202](#), Utah Code Annotated 1953

39 [67-19f-301](#), Utah Code Annotated 1953

40 [67-19f-302](#), Utah Code Annotated 1953



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

43 Section 1. Section [67-19-14.6](#) is enacted to read:

44 **[67-19-14.6](#). Annual leave -- Definition -- Previously accrued hours -- Recognition
45 of liability.**

46 (1) As used in this section:

47 (a) (i) "Annual leave II" means leave hours an employing agency provides to an
48 employee, beginning on the change date established in Subsection (2), as time off from work
49 for personal use without affecting the employee's pay.

50 (ii) "Annual leave II" does not include:

51 (A) legal holidays under Section [63G-1-301](#);

52 (B) time off as compensation for actual time worked in excess of an employee's
53 defined work period;

54 (C) sick leave;

55 (D) paid or unpaid administrative leave; or

56 (E) other paid or unpaid leave from work provided by state statute, administrative rule,

57 or by federal law or regulation.

58 (b) "Change date" means the date established by the Division of Finance under
59 Subsection (2) when annual leave II begins for a state agency.

60 (2) In accordance with the Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
61 the Division of Finance shall establish a date that is no later than January 2, 2016, when a state
62 agency shall offer annual leave II in lieu of annual leave to an employee who is eligible to
63 receive paid leave.

64 (3) An employing agency shall allow an employee who has an unused balance of
65 accrued annual leave before the change date, to use the annual leave under the same rules that
66 applied to the leave on the change date.

67 (4) (a) At the time of employee accrual of annual leave II, an employing agency shall
68 set aside the cost of each hour of annual leave II for each eligible employee in an amount
69 determined in accordance with rules made by the Division of Finance.

70 (b) The rules made under Subsection (4)(a) shall consider:

71 (i) the employee hourly rate of pay;

72 (ii) applicable employer paid taxes that would be required if the employee was paid for
73 the annual leave II instead of using it for time off;

74 (iii) other applicable employer paid benefits; and

75 (iv) adjustments due to employee hourly rate changes, including the effect on accrued
76 annual leave II balances.

77 (5) The cost set aside under Subsection (4) shall be deposited by the Division of
78 Finance into the State Employees' Annual Leave Program II Trust Fund created in Section
79 [67-19f-201](#).

80 (6) For annual leave hours accrued before the change date, an employing agency shall
81 continue to comply with the Division of Finance requirements for contributions to the
82 termination pool.

83 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

84 (a) the department shall make rules for the accrual and use of annual leave II provided
85 under this section; and

86 (b) the Division of Finance shall make rules for the set aside provisions under
87 Subsections (4) and (5).

88 Section 2. Section **67-19f-101** is enacted to read:

89 **Part 1. State Employees' Annual Leave Program II Trust Fund Act**

90 **67-19f-101. Title.**

91 This chapter is known as the "State Employees' Annual Leave Program II Trust Fund
92 Act."

93 Section 3. Section **67-19f-102** is enacted to read:

94 **67-19f-102. Definitions.**

95 As used in this chapter:

96 (1) "Annual leave II" is as defined in Section [67-19-14.6](#).

97 (2) "Board of trustees" or "board" means the board of trustees created in Section
98 [67-19f-202](#).

99 (3) "Income" means the revenues received by the state treasurer from investments of
100 the trust fund principal.

101 (4) "Trust fund" means the State Employees' Annual Leave Program II Trust Fund
102 created in Section [67-19f-201](#).

103 Section 4. Section **67-19f-201** is enacted to read:

104 **Part 2. State Employees' Annual Leave Program II Trust Fund**

105 **67-19f-201. Trust fund -- Creation -- Oversight -- Dissolution.**

106 (1) There is created a trust fund entitled the "State Employees' Annual Leave Program
107 II Trust Fund."

108 (2) The trust fund consists of:

109 (a) ongoing revenue provided from a state agency set aside for accrued annual leave II
110 required under Section [67-19-14.6](#);

111 (b) appropriations made to the trust fund by the Legislature, if any;

112 (c) income; and

113 (d) revenue received from other sources.

114 (3) The Division of Finance shall account for the receipt and expenditures of trust fund
115 money.

116 (4) (a) The state treasurer shall invest trust fund money by following the procedures
117 and requirements of Part 3, Investment of Trust Funds.

118 (b) (i) The trust fund shall earn interest.

119 (ii) The state treasurer shall deposit all interest or other income earned from investment
120 of the trust fund back into the trust fund.

121 (5) The board of trustees created in Section 67-19f-202 may expend money from the
122 trust fund for:

123 (a) reimbursement to the employer of the costs paid to the trust fund in accordance
124 with Section 67-19-14.6 as annual leave II is used by an employee; and

125 (b) reasonable administrative costs that the board of trustees incurs in performing its
126 duties as trustee of the trust fund.

127 (6) The board of trustees shall ensure that:

128 (a) money deposited into the trust fund is expended only for the costs of annual leave
129 II, including any allotted benefits under Subsection 67-19-14.6(4); and

130 (b) assets of the trust fund are dedicated to providing annual leave II established by
131 statute and rule.

132 Section 5. Section 67-19f-202 is enacted to read:

133 **67-19f-202. Board of trustees of the State Employees' Annual Leave Program II**
134 **Trust Fund.**

135 (1) (a) There is created a board of trustees of the State Employees' Annual Leave
136 Program II Trust Fund composed of the following three members:

137 (i) the state treasurer or the state treasurer's designee;

138 (ii) the director of the Division of Finance or the director's designee; and

139 (iii) the executive director of the Governor's Office of Management and Budget or the
140 executive director's designee.

141 (b) The state treasurer is chair of the board.

142 (c) Three members of the board is a quorum.

143 (d) A member may not receive compensation or benefits for the member's service, but
144 may receive per diem and travel expenses as allowed in:

145 (i) Section 63A-3-106;

146 (ii) Section 63A-3-107; and

147 (iii) rules made by the Division of Finance according to Sections 63A-3-106 and
148 63A-3-107.

149 (e) (i) Except as provided in Subsection (1)(e)(ii), the state treasurer shall staff the

150 board of trustees.

151 (ii) The Division of Finance shall provide accounting services for the trust fund.

152 (2) The board shall:

153 (a) on behalf of the state, act as trustee of the trust fund created under Section

154 67-19f-201 and exercise the state's fiduciary responsibilities;

155 (b) meet at least twice per year;

156 (c) review and approve the policies, projections, rules, criteria, procedures, forms,

157 standards, performance goals, and actuarial reports for the trust fund;

158 (d) review and approve the budget for the trust fund;

159 (e) review financial records for the trust fund, including trust fund receipts,

160 expenditures, and investments; and

161 (f) do any other things necessary to perform the state's fiduciary obligations under the

162 trust fund.

163 (3) The board may:

164 (a) commission and obtain actuarial studies of the liabilities for the trust fund; and

165 (b) for purposes of the trust fund, establish labor additive rates to charge for the

166 administrative expenses of the trust fund.

167 (4) The attorney general shall:

168 (a) act as legal counsel and provide legal representation to the board of trustees; and

169 (b) attend, or direct an attorney from the Office of the Attorney General to attend, each

170 meeting of the board of trustees.

171 Section 6. Section **67-19f-301** is enacted to read:

172 **Part 3. Investment of Trust Funds**

173 **67-19f-301. Investment of State Employees' Annual Leave Program II Trust**

174 **Fund.**

175 (1) The state treasurer shall invest the assets of the trust fund with the primary goal of
176 providing for the stability, income, and growth of the principal.

177 (2) Nothing in this section requires a specific outcome in investing.

178 (3) The state treasurer may deduct any administrative costs incurred in managing trust
179 fund assets from earnings before distributing the trust fund assets.

180 (4) (a) The state treasurer may employ professional asset managers to assist in the

181 investment of assets of the trust fund.

182 (b) The treasurer may only provide compensation to asset managers from earnings
183 generated by the trust fund's investments.

184 Section 7. Section **67-19f-302** is enacted to read:

185 **67-19f-302. State treasurer to follow "prudent investor" rule -- Standard of care.**

186 (1) The state treasurer shall invest and manage the trust fund assets as a prudent
187 investor would, by:

188 (a) considering the purposes, terms, distribution requirements, and other circumstances
189 of the trust fund; and

190 (b) exercising reasonable care, skill, and caution in order to meet the standard of care
191 of a prudent investor.

192 (2) In determining whether the state treasurer has met the standard of care of a prudent
193 investor, the judge or finder of fact shall:

194 (a) consider the state treasurer's actions in light of the facts and circumstances existing
195 at the time of the investment decision or action, and not by hindsight; and

196 (b) evaluate the state treasurer's investment and management decisions respecting
197 individual assets:

198 (i) not in isolation, but in the context of the trust fund portfolio as a whole; and

199 (ii) as a part of an overall investment strategy that has risk and return objectives
200 reasonably suited to the trust fund.