

1 **RETIREMENT WITHDRAWAL MODIFICATIONS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Kraig Powell

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 ▶ allows certain withdrawing entities to make an election to withdraw from
14 participation in a Utah retirement system or plan for current and future employees in
15 certain circumstances;
- 16 ▶ requires the withdrawing entity to pay certain costs that arise out of the election of
17 the withdrawal;
- 18 ▶ excludes all employees of a withdrawing entity from participation in the Public
19 Employees' Contributory Retirement System, the Public Employees'
20 Noncontributory Retirement System, and the New Public Employees' Tier II
21 Contributory Retirement Act under certain circumstances; and
- 22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 [49-11-623](#), as enacted by Laws of Utah 2014, Chapter 365

30 49-12-203, as last amended by Laws of Utah 2014, Chapters 15, 201, and 365

31 49-13-203, as last amended by Laws of Utah 2014, Chapters 15 and 365

32 49-22-203, as last amended by Laws of Utah 2014, Chapters 15 and 365

33

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

35 Section 1. Section 49-11-623 is amended to read:

36 49-11-623. **Withdrawing entity -- Participation election date -- Withdrawal costs**

37 **-- Rulemaking.**

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

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

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

41 17-50-318;

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

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

44 Internal Revenue Code; and

45 (d) is not a state institution of higher education as described in Section 53B-2-101.

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

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

48 (a) the withdrawing entity shall determine a date that is no later than January 1, 2017,

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

50 (b) subject to the provisions of Subsection (6), the withdrawing entity shall pay to the

51 office any reasonable actuarial and administrative costs determined by the office to have arisen

52 out of an election made under this section.

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

54 (a) (i) continue its participation for all current employees of the withdrawing entity,

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

56 [~~(b)~~] (ii) withdraw from participation in all systems or plans for all persons initially

57 entering employment with the withdrawing entity, beginning on the date set under Subsection

58 (2)(a)~~[-]~~; or

59 (b) withdraw from participation in all systems or plans for all current and future
60 employees of the withdrawing entity, beginning on the date set under Subsection (2)(a).

61 (4) (a) An election provided under Subsection (3):

62 (i) is a one-time election made no later than the date specified under Subsection (2)(a);

63 (ii) shall be documented by a resolution adopted by the governing body of the
64 withdrawing entity;

65 (iii) is irrevocable; and

66 (iv) applies to the withdrawing entity as the employer and to all employees of the
67 withdrawing entity.

68 (b) Notwithstanding an election made under Subsection (3), any eligibility for service
69 credit earned by an employee under this title before the date specified under Subsection (2)(a)
70 is not affected by this section.

71 (5) If a withdrawing entity elects to continue participation under Subsection (3), the
72 withdrawing entity shall continue to be subject to the laws and the rules governing the system
73 or plan in which an employee participates, including the accrual of service credit and payment
74 of contributions.

75 (6) Before a withdrawing entity may withdraw under this section, the withdrawing
76 entity and the office shall enter into an agreement on:

77 (a) the costs described under Subsection (2)(b); and

78 (b) arrangements for the payment of the costs described under Subsection (2)(b).

79 ~~[(6)]~~ (7) The board shall make rules to implement this section.

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

81 **49-12-203. Exclusions from membership in system.**

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

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

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

86 education who participates in a retirement system with a public or private retirement system,
87 organization, or company designated by the State Board of Regents during any period in which
88 required contributions based on compensation have been paid on behalf of the employee by the
89 employer;

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

91 (d) an executive department head of the state, a member of the State Tax Commission,
92 the Public Service Commission, and a member of a full-time or part-time board or commission
93 who files a formal request for exemption;

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

96 (f) an employee who is employed on or after July 1, 2009, with an employer that has
97 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection
98 [49-12-202\(2\)\(c\)](#);

99 (g) an employee who is employed on or after July 1, 2014, with an employer that has
100 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection
101 [49-12-202\(2\)\(d\)](#); or

102 (h) an employee who is employed with a withdrawing entity that has elected, prior to
103 January 1, 2017, to exclude;

104 (i) new employees from participation in this system under Subsection
105 [49-11-623\(3\)\(a\)](#); or

106 (ii) all employees from participation in this system under Subsection [49-11-623\(3\)\(b\)](#).

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

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

113 (b) was previously terminated prior to being eligible for service credit in this system

114 and is reemployed within three months of termination by the same participating employer, the
115 participating employer shall report and certify that the member is a regular full-time employee
116 when the total of the periods of employment equals six months and the employee otherwise
117 qualifies for service credits in this system.

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

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

123 (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service
124 credit earned by an employee under this chapter before July 1, 2014, is not affected under
125 Subsection (1)(g).

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

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

130 (b) an elected official;

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

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

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

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

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

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

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

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

141 (k) a person appointed as a city manager or chief city administrator or another person

142 employed by a municipality, county, or other political subdivision, who is an at-will employee;
143 and

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

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

149 (b) An employee may not be exempted unless the employee is employed in an
150 exempted position designated by the participating employer.

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

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

156 (7) Each participating employer shall:

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

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

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

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

161 **49-13-203. Exclusions from membership in system.**

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

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

165 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
166 education who participates in a retirement system with a public or private retirement system,
167 organization, or company designated by the State Board of Regents during any period in which
168 required contributions based on compensation have been paid on behalf of the employee by the
169 employer;

- 170 (c) an employee serving as an exchange employee from outside the state;
- 171 (d) an executive department head of the state or a legislative director, senior executive
172 employed by the governor's office, a member of the State Tax Commission, a member of the
173 Public Service Commission, and a member of a full-time or part-time board or commission
174 who files a formal request for exemption;
- 175 (e) an employee of the Department of Workforce Services who is covered under
176 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
- 177 (f) an employee who is employed with an employer that has elected to be excluded
178 from participation in this system under Subsection [49-13-202\(5\)](#), effective on or after the date
179 of the employer's election under Subsection [49-13-202\(5\)](#); or
- 180 (g) an employee who is employed with a withdrawing entity that has elected, prior to
181 January 1, 2017, to exclude:
 - 182 (i) new employees from participation in this system under Subsection
183 [49-11-623\(3\)](#)[-](a); or
 - 184 (ii) all employees from participation in this system under Subsection [49-11-623\(3\)\(b\)](#).
- 185 (2) If an employee whose status is temporary in nature due to the nature of type of
186 work to be performed:
 - 187 (a) is employed for a term that exceeds six months and the employee otherwise
188 qualifies for service credit in this system, the participating employer shall report and certify to
189 the office that the employee is a regular full-time employee effective the beginning of the
190 seventh month of employment; or
 - 191 (b) was previously terminated prior to being eligible for service credit in this system
192 and is reemployed within three months of termination by the same participating employer, the
193 participating employer shall report and certify that the member is a regular full-time employee
194 when the total of the periods of employment equals six months and the employee otherwise
195 qualifies for service credits in this system.
- 196 (3) (a) Upon cessation of the participating employer contributions, an employee under
197 Subsection (1)(b) is eligible for service credit in this system.

198 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service
199 credit earned by an employee under this chapter before the date of the election under
200 Subsection 49-13-202(5) is not affected under Subsection (1)(f).

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

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

205 (b) an elected official;

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

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

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

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

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

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

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

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

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

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

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

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

225 (b) An employee may not be exempted unless the employee is employed in a position

226 designated by the participating employer.

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

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

232 (7) Each participating employer shall:

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

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

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

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

237 **49-22-203. Exclusions from membership in system.**

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

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

241 (b) except as provided under Subsection (3), an employee of an institution of higher
242 education who participates in a retirement system with a public or private retirement system,
243 organization, or company designated by the State Board of Regents during any period in which
244 required contributions based on compensation have been paid on behalf of the employee by the
245 employer;

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

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

249 (e) an employee who is employed with a withdrawing entity that has elected, prior to
250 January 1, 2017, to exclude;

251 (i) new employees from participation in this system under Subsection

252 [49-11-623\(3\)](#)[-](a); or

253 (ii) all employees from participation in this system under Subsection [49-11-623\(3\)\(b\)](#).

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

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

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

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

267 **Section 5. Effective date.**

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