

Senator Ralph Okerlund proposes the following substitute bill:

POSTRETIREMENT EMPLOYMENT RESTRICTIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rich Cunningham

Senate Sponsor: Todd Weiler

Cosponsors:	Sandra Hollins	Dixon M. Pitcher
Jacob L. Anderegg	Eric K. Hutchings	Marie H. Poulson
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Melvin R. Brown	Brian S. King	John R. Westwood
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LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending postretirement reemployment provisions.

Highlighted Provisions:

This bill:

- requires that certain costs shall be included in the final contribution rates adapted and certified by the board;
- for a certain period of time, allows a retiree to be reemployed with a participating employer after a certain period from the retiree's retirement date if the retiree:
 - does not receive certain employer provided retirement benefits for the reemployment; and



- 24 • is reemployed by a different agency;
- 25 ▶ requires a participating employer to pay a portion of the contribution rate for a
- 26 reemployed retiree in certain circumstances; and
- 27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **49-11-301**, as last amended by Laws of Utah 2004, Chapter 322

35 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256



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

38 Section 1. Section **49-11-301** is amended to read:

39 **49-11-301. Creation -- Board to act as trustees of the fund -- Commingling and**
40 **pooling of funds -- Interest earnings -- Funded ratio.**

41 (1) There is created a common trust fund known as the "Utah State Retirement
42 Investment Fund" for the purpose of enlarging the investment base and simplifying investment
43 procedures and functions.

44 (2) (a) The board shall act as trustees of the Utah State Retirement Investment Fund
45 and, through the executive director, may commingle and pool the funds and investments of any
46 system, plan, or program into the Utah State Retirement Investment Fund, if the principal
47 amounts of the participating funds do not lose their individual identity and are maintained as
48 separate trust funds on the books of the office.

49 (b) (i) In combining the investments of any fund, each of the participating funds shall
50 be credited initially with its share of the total assets transferred to the Utah State Retirement
51 Investment Fund.

52 (ii) The value of the transferred assets shall be calculated in accordance with generally
53 accepted accounting principles.

54 (c) Subsequent transfers of additional capital from participating funds shall be credited

55 similarly to its respective trust account.

56 (d) The income or principal or equity credit belonging to one participating fund may
57 not be transferred to another, except for the purpose of:

58 (i) actuarially recommended transfers in order to adjust employer contribution rates for
59 an employer that participates in both contributory and noncontributory systems; or

60 (ii) transfers which reflect the value of service credit accrued in different systems
61 during a member's career.

62 (3) The assets of the funds are for the exclusive benefit of the members, participants,
63 and covered individuals and may not be diverted or appropriated for any purpose other than
64 that permitted by this title.

65 (4) (a) Interest and other earnings shall be credited to each participating fund on a pro
66 rata equity position basis.

67 (b) (i) A portion of the interest and other earnings of the common trust fund may be
68 credited to a reserve account within the Utah State Retirement Investment Fund to meet
69 adverse experiences arising from investments or other contingencies.

70 (ii) Each participating fund shall retain its proportionate equity in the reserve account.

71 (5) (a) The actuarial funded ratio of the systems may reach and be maintained at 110%,
72 as determined by the board's actuary using assumptions adopted by the board, before the board
73 is required to certify a decrease in contribution rates.

74 (b) ~~[The]~~ Except as provided in Subsection (6), the board may not increase
75 contribution rates to attain an actuarial funded ratio greater than 100%.

76 (6) (a) The cost of any amendment to this title shall be included in the final
77 contribution rates adopted and certified by the board in accordance with Subsections
78 49-11-102(14) and 49-11-203(1)(l).

79 (b) If a preliminary certified contribution rate approved by the board prior to an annual
80 General Session or Special Session of the Legislature was maintained at a previous year's level
81 that is higher than the contribution rate calculated by the board's actuary for that year in
82 accordance with Subsection (5)(a), the board's final certified contribution rate shall be the sum
83 of the actuarially determined costs from any amendment to this title during the General Session
84 or Special Session and the preliminary certified contribution rate.

85 Section 2. Section **49-11-505** is amended to read:

86 **49-11-505. Reemployment of a retiree -- Restrictions -- Penalties.**

87 (1) (a) For purposes of this section, "retiree":

88 (i) means a person who:

89 (A) retired from a participating employer; and

90 (B) begins reemployment on or after July 1, 2010, with a participating employer;

91 (ii) does not include a person:

92 (A) who was reemployed by a participating employer before July 1, 2010; and

93 (B) whose participating employer that reemployed the person under Subsection

94 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with
95 Section 49-11-621 after July 1, 2010; and96 (iii) does not include a person who is reemployed as an active senior judge or an active
97 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by
98 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.99 (b) (i) This section does not apply to employment as an elected official if the elected
100 official's position is not full time as certified by the participating employer.101 (ii) The provisions of this section apply to an elected official whose elected position is
102 full time as certified by the participating employer.103 (c) (i) This section does not apply to employment as a part-time appointed board
104 member who does not receive any remuneration, stipend, or other benefit for the part-time
105 appointed board member's service.106 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does
107 not include receipt of per diem and travel expenses up to the amounts established by the
108 Division of Finance in:

109 (A) Section 63A-3-106;

110 (B) Section 63A-3-107; and

111 (C) rules made by the Division of Finance according to Sections 63A-3-106 and
112 63A-3-107.113 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
114 means a person who:115 (A) is employed by a participating employer [~~and who~~];

116 (B) performs emergency services for another participating employer that is a different

117 agency [~~in which the person:~~];

118 [~~(A)~~] (C) [~~has been~~] is trained in techniques and skills required for the service the
119 person provides to the participating employer;

120 [~~(B)~~] (D) continues to receive regular training required for the service;

121 [~~(C)~~] (E) is on the rolls as a trained affiliated emergency services worker of the
122 participating employer; and

123 [~~(D)~~] (F) provides ongoing service for a participating employer, which service may
124 include service as a volunteer firefighter, reserve law enforcement officer, search and rescue
125 personnel, emergency medical technician, ambulance personnel, park ranger, or public utilities
126 worker.

127 (ii) A person who performs work or service but does not meet the requirements of
128 Subsection (1)(d)(i) is not an affiliated emergency services worker for purposes of this
129 Subsection (1)(d).

130 (iii) The office may not cancel the retirement allowance of a retiree who is employed as
131 an affiliated emergency services worker within one year of the retiree's retirement date if the
132 affiliated emergency services worker does not receive any compensation, except for:

133 (A) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money
134 or cash equivalent payment not tied to productivity and paid periodically for services;

135 (B) a length-of-service award;

136 (C) insurance policy premiums paid by the participating employer in the event of death
137 of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

138 (D) reimbursement of expenses incurred in the performance of duties.

139 (iv) For purposes of Subsections (1)(d)(iii)(A) and (B), the total amount of any
140 discounts, tax credits, vouchers, and payments to a volunteer may not exceed \$500 per month.

141 (v) Beginning January 1, 2016, the board shall adjust the amount under Subsection
142 (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year
143 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as
144 determined by the board.

145 (vi) The office shall cancel the retirement allowance of a retiree for the remainder of
146 the calendar year if employment as an affiliated emergency services worker with a participating
147 employer exceeds the limitation under Subsection (1)(d)(iv).

148 (vii) If a retiree is employed as an affiliated emergency services worker under the
149 provisions of Subsection (1)(d), the termination date of the employment as an affiliated
150 emergency services worker, as confirmed in writing by the participating employer, is
151 considered the retiree's retirement date for the purpose of calculating the separation
152 requirement under Subsection (3)(a).

153 (2) A retiree may not for the same period of reemployment:

154 (a) (i) earn additional service credit; or

155 (ii) receive any retirement related contribution from a participating employer; and

156 (b) receive a retirement allowance.

157 (3) (a) Except as provided under Subsection (1)(d), (3)(b), (3)(d), or (10), the office
158 shall cancel the retirement allowance of a retiree if the reemployment with a participating
159 employer begins within one year of the retiree's retirement date.

160 (b) The office may not cancel the retirement allowance of a retiree who is reemployed
161 with a participating employer within one year of the retiree's retirement date if:

162 (i) the retiree:

163 (A) is not reemployed by a participating employer for a period of at least 60 days from
164 the retiree's retirement date;

165 (B) is reemployed by a different agency;

166 (C) does not receive any employer paid retirement service credit or retirement related
167 contributions from the participating employer; and

168 (D) only participates in postretirement reemployment under this Subsection (3)(b) for a
169 maximum of five years; and

170 (ii) except as provided in Subsection (3)(c)(i), the participating employer pays the
171 certified contribution rate to the office as if the retiree's reemployed position were considered to
172 be an eligible, full-time position within that system but the retiree does not earn additional
173 service credit or receive a retirement related contribution.

174 (c) (i) The participating employer shall pay the full normal cost rate portion and 80% of
175 the amortization rate portion of the certified contribution rate to the office for a retiree
176 reemployed under Subsection (3)(b).

177 (ii) Any contribution paid to the office under Subsection (3)(b)(ii) shall be applied to
178 the system that would have covered the retiree if the retiree's reemployed position were

179 considered to be an eligible, full-time position within that system.

180 ~~[(b) The]~~ (d) The office may not cancel the retirement allowance of a retiree who is
181 reemployed with a participating employer within one year of the retiree's retirement date if:

182 (i) the retiree is not reemployed by a participating employer for a period of at least 60
183 days from the retiree's retirement date;

184 (ii) upon reemployment after the break in service under Subsection (3)~~[(b)]~~(d)(i), the
185 retiree does not receive any employer provided benefits, including:

186 (A) medical benefits;

187 (B) dental benefits;

188 (C) other insurance benefits except for workers' compensation as provided under Title
189 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law
190 for social security, Medicare, and unemployment insurance; or

191 (D) paid time off, including sick, annual, or other type of leave; and

192 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in
193 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the
194 retiree's retirement allowance is based; or

195 (B) the retiree is reemployed as a judge as defined under Section [78A-11-102](#).

196 ~~[(c)]~~ (e) Beginning January 1, 2013, the board shall adjust the amounts under
197 Subsection (3)~~[(b)]~~(d)(iii)(A) by the annual change in the Consumer Price Index during the
198 previous calendar year as measured by a United States Bureau of Labor Statistics Consumer
199 Price Index average as determined by the board.

200 ~~[(d)]~~ (f) The office shall cancel the retirement allowance of a retiree for the remainder
201 of the calendar year if the reemployment with a participating employer exceeds the limitation
202 under Subsection (3)~~[(b)]~~(d)(iii)(A).

203 ~~[(e)]~~ (g) If a retiree is reemployed under the provisions of Subsection (3)(b) or (d)~~[:]~~
204 the termination date of the reemployment, as confirmed in writing by the participating
205 employer, is considered the retiree's retirement date for the purpose of calculating the
206 separation requirement under Subsection (3)(a).

207 ~~[(f) If a retiree received a retirement allowance in error, due to reemployment in
208 violation of this section:]~~

209 ~~[(i) the office shall cancel the retiree's retirement allowance; and]~~

210 ~~[(ii) if the retiree applies for a future benefit, the office shall recover any overpayment~~
211 ~~in accordance with the provisions of Section 49-11-607.]~~

212 (4) If a reemployed retiree has completed the one-year separation from employment
213 with a participating employer required under Subsection (3)(a), the retiree may elect to:

214 (a) earn additional service credit in accordance with this title and cancel the retiree's
215 retirement allowance; or

216 (b) continue to receive the retiree's retirement allowance and forfeit any retirement
217 related contribution from the participating employer who reemployed the retiree.

218 (5) (a) As used in this Subsection (5), "amortization rate" means the amortization rate,
219 as defined in Section 49-11-102, to be applied to the system that would have covered the retiree
220 if the retiree's reemployed position were deemed to be an eligible, full-time position within that
221 system.

222 (b) A participating employer who reemploys a retiree shall contribute to the office the
223 amortization rate if the reemployed retiree:

224 (i) has completed the one-year separation from employment with a participating
225 employer required under Subsection (3)(a); and

226 (ii) makes an election under Subsection (4)(b) to continue to receive a retirement
227 allowance while reemployed.

228 (6) (a) A participating employer shall immediately notify the office:

229 (i) if the participating employer reemploys a retiree;

230 (ii) whether the reemployment is subject to Subsection (3)(b), (3)(d), or (4) of this
231 section; and

232 (iii) of any election by the retiree under Subsection (4).

233 (b) A participating employer shall certify to the office whether the position of an
234 elected official is or is not full time.

235 (c) A participating employer is liable to the office for a payment or failure to make a
236 payment in violation of this section.

237 (d) If a participating employer fails to notify the office in accordance with this section,
238 the participating employer is immediately subject to a compliance audit by the office.

239 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in
240 accordance with Subsection (7)(b) if the office receives notice or learns of:

- 241 (i) the reemployment of a retiree in violation of Subsection (1)(d) or (3); or
- 242 (ii) the election of a reemployed retiree under Subsection (4)(a).
- 243 (b) If the retiree is eligible for retirement coverage in the reemployed position, the
- 244 office shall cancel the allowance of a retiree who is subject to Subsection (7)(a), and reinstate
- 245 the retiree to active member status on the first day of the month following the date of:
- 246 (i) reemployment if the retiree is subject to Subsection (3); or
- 247 (ii) an election by an employee under Subsection (4)(a).
- 248 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
- 249 position:
- 250 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and
- 251 (ii) except as provided under Subsection (5)(c), the participating employer shall pay the
- 252 amortization rate to the office on behalf of the retiree.
- 253 (8) (a) [~~A~~] For a retiree subject to Subsection (7)(b) who retires within two years from
- 254 the date of reemployment, the office:
- 255 (i) [~~is not entitled to a recalculated~~] may not recalculate a retirement benefit for the
- 256 retiree; and
- 257 (ii) [~~will~~] shall resume the allowance that was being paid to the retiree at the time of
- 258 the cancellation.
- 259 (b) Subject to Subsection (2), for a retiree who is reinstated to active membership
- 260 under Subsection (7) and who retires two or more years after the date of reinstatement to active
- 261 membership, the office shall:
- 262 (i) resume [~~receiving~~] the allowance that was being paid at the time of cancellation;
- 263 and
- 264 (ii) [~~receive~~] calculate an additional allowance for the retiree based on the formula in
- 265 effect at the date of the subsequent retirement for all service credit accrued between the first
- 266 and subsequent retirement dates.
- 267 (9) (a) A retiree subject to this section shall report to the office the status of the
- 268 reemployment under Subsection (3) or (4).
- 269 (b) If the retiree fails to inform the office of an election under Subsection (4), the office
- 270 shall withhold one month's benefit for each month the retiree fails to inform the office under
- 271 Subsection (9)(a).

272 (10) A retiree shall be considered as having completed the one-year separation from
273 employment with a participating employer required under Subsection (3)(a), if the retiree:

274 (a) before retiring:

275 (i) was employed with a participating employer as a public safety service employee as
276 defined in Section 49-14-102, 49-15-102, or 49-23-102;

277 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury
278 resulting from external force or violence while performing the duties of the employment, and
279 for which injury the retiree would have been approved for total disability in accordance with
280 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if
281 years of service are not considered;

282 (iii) had less than 30 years of service credit but had sufficient service credit to retire,
283 with an unreduced allowance making the public safety service employee ineligible for
284 long-term disability payments under Title 49, Chapter 21, Public Employees' Long-Term
285 Disability Act, or a substantially similar long-term disability program; and

286 (iv) does not receive any long-term disability benefits from any participating employer;
287 and

288 (b) is reemployed by a different participating employer.

289 (11) If a retiree received a retirement allowance in error, due to reemployment in
290 violation of this section:

291 (a) the office shall cancel the retiree's retirement allowance;

292 (b) if the retiree applies for a future benefit, the office shall recover any overpayment in
293 accordance with the provisions of Section 49-11-607; and

294 (c) if a retiree or participating employer failed to report reemployment in violation of
295 this section, the retiree, participating employer, or both that are found to be responsible for the
296 failure to report are liable to the office for the amount of any overpayment resulting from the
297 violation.

298 [~~H~~] (12) The board may make rules to implement this section.

299 Section 3. **Effective date.**

300 This bill takes effect on July 1, 2016.