

**Representative Rich Cunningham** proposes the following substitute bill:

**MODIFICATIONS TO POSTRETIREMENT REEMPLOYMENT  
RESTRICTIONS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rich Cunningham**

Senate Sponsor: \_\_\_\_\_

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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:

- ▶ 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;
  - is reemployed by a different agency; and
  - is reemployed by a participating employer that employs the retiree as an educator at a school that receives Title I funding;
- ▶ requires a participating employer to pay the contribution rate for a reemployed retiree in certain circumstances;
- ▶ provides for a sunset of certain exceptions to postretirement employment restrictions; and
- ▶ makes technical changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256

33 ENACTS:

34 **63I-1-249**, Utah Code Annotated 1953



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

37 Section 1. Section **49-11-505** is amended to read:

38 **49-11-505. Reemployment of a retiree -- Restrictions -- Penalties.**

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

40 (i) means a person who:

41 (A) retired from a participating employer; and

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

43 (ii) does not include a person:

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

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

46 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with  
47 Section **49-11-621** after July 1, 2010; and

48 (iii) does not include a person who is reemployed as an active senior judge or an active  
49 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by  
50 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

51 (b) (i) This section does not apply to employment as an elected official if the elected  
52 official's position is not full time as certified by the participating employer.

53 (ii) The provisions of this section apply to an elected official whose elected position is  
54 full time as certified by the participating employer.

55 (c) (i) This section does not apply to employment as a part-time appointed board  
56 member who does not receive any remuneration, stipend, or other benefit for the part-time

57 appointed board member's service.

58 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does  
59 not include receipt of per diem and travel expenses up to the amounts established by the  
60 Division of Finance in:

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

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

63 (C) rules made by the Division of Finance according to Sections 63A-3-106 and  
64 63A-3-107.

65 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"  
66 means a person who:

67 (A) is employed by a participating employer [~~and who~~];

68 (B) performs emergency services for another participating employer that is a different  
69 agency [~~in which the person~~];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

108 (b) receive a retirement allowance.

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

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

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

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

118 (A) retirement service credit or retirement related contributions;

- 119           ~~[(A)]~~ (B) medical benefits;
- 120           ~~[(B)]~~ (C) dental benefits;
- 121           ~~[(C)]~~ (D) other insurance benefits except for workers' compensation as provided under  
122 Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease  
123 Act, and withholdings required by federal or state law for Social Security, Medicare, and  
124 unemployment insurance; or
- 125           ~~[(D)]~~ (E) paid time off, including sick, annual, or other type of leave; and
- 126           (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in  
127 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the  
128 retiree's retirement allowance is based; or
- 129           (B) the retiree is reemployed as a judge as defined under Section [78A-11-102](#).
- 130           (c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection  
131 (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar  
132 year as measured by a United States Bureau of Labor Statistics Consumer Price Index average  
133 as determined by the board.
- 134           (d) The office shall cancel the retirement allowance of a retiree for the remainder of the  
135 calendar year if the reemployment with a participating employer exceeds the limitation under  
136 Subsection (3)(b)(iii)(A).
- 137           ~~(e) The office may not cancel the retirement allowance of a retiree who is reemployed~~  
138 with a participating employer within one year of the retiree's retirement date if:
- 139           (i) the retiree:
- 140           (A) is not reemployed by a participating employer for a period of at least 60 days from  
141 the retiree's retirement date;
- 142           (B) is reemployed by a different agency;
- 143           (C) is reemployed by a participating employer with a principal place of employment for  
144 the retiree in a school that receives funding under Title I of the Elementary and Secondary  
145 Education Act, 20 U.S.C. Sec. 6301, and the retiree is reemployed as an educator, as defined in  
146 Section [53A-6-103](#); and
- 147           (D) does not receive any employer paid retirement service credit or retirement related  
148 contributions from the participating employer; and
- 149           (ii) the participating employer pays the contribution rate to the office as if the retiree's

150 reemployed position were considered to be an eligible, full-time position within that system,  
151 but the retiree does not earn additional service credit.

152 (f) Any contribution paid to the office under Subsection (3)(e)(ii) shall be applied to  
153 the system that would have covered the retiree if the retiree's reemployed position were  
154 considered to be an eligible, full-time position within that system.

155 ~~[(e)]~~ (g) If a retiree is reemployed under the provisions of Subsection (3)(b)[;] or (3)(e),  
156 the termination date of the reemployment, as confirmed in writing by the participating  
157 employer, is considered the retiree's retirement date for the purpose of calculating the  
158 separation requirement under Subsection (3)(a).

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

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

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

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

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

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

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

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

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

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

180 (c) A participating employer who reemploys a retiree in accordance with Subsection

181 (3)(b) is not required to contribute the amortization rate to the office.

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

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

184 (ii) whether the reemployment is subject to Subsection (3)(b), (3)(e), or (4) of this  
185 section; and

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

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

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

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

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

195 (i) the reemployment of a retiree in violation of Subsection (1)(d) or (3); or

196 (ii) the election of a reemployed retiree under Subsection (4)(a).

197 (b) If the retiree is eligible for retirement coverage in the reemployed position, the  
198 office shall cancel the allowance of a retiree who is subject to Subsection (7)(a), and reinstate  
199 the retiree to active member status on the first day of the month following the date of:

200 (i) reemployment if the retiree is subject to Subsection (3); or

201 (ii) an election by an employee under Subsection (4)(a).

202 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed  
203 position:

204 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

205 (ii) except as provided under Subsection (5)(c), the participating employer shall pay the  
206 amortization rate to the office on behalf of the retiree.

207 (8) (a) [~~A~~] For a retiree subject to Subsection (7)(b) who retires within two years from  
208 the date of reemployment, the office:

209 (i) [~~is not entitled to a recalculated~~] may not recalculate a retirement benefit for the  
210 retiree; and

211 (ii) [~~with~~] shall resume the allowance that was being paid to the retiree at the time of

212 the cancellation.

213 (b) Subject to Subsection (2), for a retiree who is reinstated to active membership  
214 under Subsection (7) and who retires two or more years after the date of reinstatement to active  
215 membership, the office shall:

216 (i) resume [~~receiving~~] the allowance that was being paid at the time of cancellation;  
217 and

218 (ii) [~~receive~~] calculate an additional allowance for the retiree based on the formula in  
219 effect at the date of the subsequent retirement for all service credit accrued between the first  
220 and subsequent retirement dates.

221 (9) (a) A retiree subject to this section shall report to the office the status of the  
222 reemployment under Subsection (3) or (4).

223 (b) If the retiree fails to inform the office of an election under Subsection (4), the office  
224 shall withhold one month's benefit for each month the retiree fails to inform the office under  
225 Subsection (9)(a).

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

228 (a) before retiring:

229 (i) was employed with a participating employer as a public safety service employee as  
230 defined in Section [49-14-102](#), [49-15-102](#), or [49-23-102](#);

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

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

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

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

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

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

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

248 (c) if a retiree or participating employer failed to report reemployment in violation of  
249 this section, the retiree, participating employer, or both who are found to be responsible for the  
250 failure to report are liable to the office for the amount of any overpayment resulting from the  
251 violation.

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

253 Section 2. Section **63I-1-249** is enacted to read:

254 **63I-1-249. Repeal dates, Title 49.**

255 Subsections [49-11-505](#)(3)(e) and (f) are repealed on June 30, 2021.