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RETIREMENT OFFICE AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ann W. Hardy

Senate Sponsor: Beverly Ann Evans

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act to make certain technical and administrative amendments.

Highlighted Provisions:

This bill:

- ▶ amends purchase of retirement service credit in the Utah State Retirement System:
 - for employment in a private school based in the United States, the purchase is allowed only if the member received an employer paid retirement benefit for the employment;
 - to include public employment in a territory of the United States; and
 - by requiring payments to be made to the retirement system in which the member is currently covered;
- ▶ requires that a court order on the distribution of benefits be made within 12 months of the death of the member;
- ▶ requires rather than allows the Consumer Price Index used in calculating annual cost-of-living adjustments in the Public Employees' Noncontributory Retirement System to be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board;
- ▶ requires the Public Employees' Benefit and Insurance Program to provide for health insurance coverage for state employees who receive a disability benefit rather than



28 provide a waiver of the cost of the coverage;

29 ▶ clarifies that a member's spouse at the time of death is entitled to the spouse's
30 allowance upon the death of a governor or legislator receiving a retirement
31 allowance;

32 ▶ changes from a participating employer to a risk pool as the entity that may elect to
33 provide a waiver for its employees for health insurance coverage; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **49-11-403**, as last amended by Chapter 116, Laws of Utah 2005

42 **49-11-612**, as last amended by Chapter 118, Laws of Utah 2004

43 **49-12-102**, as last amended by Chapter 240, Laws of Utah 2003

44 **49-13-102**, as last amended by Chapter 240, Laws of Utah 2003

45 **49-13-407**, as renumbered and amended by Chapter 250, Laws of Utah 2002

46 **49-14-203**, as last amended by Chapter 176, Laws of Utah 2005

47 **49-19-501**, as renumbered and amended by Chapter 250, Laws of Utah 2002

48 **49-20-409**, as enacted by Chapter 116, Laws of Utah 2005



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

51 Section 1. Section **49-11-403** is amended to read:

52 **49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

53 (1) A member, a participating employer, or a member and a participating employer
54 jointly may purchase service credit equal to the period of the member's employment in the
55 following:

56 (a) United States federal employment;

57 (b) employment in a private school based in the United States, if the member received
58 an employer paid retirement benefit for the employment;

59 (c) public employment in another state or territory of the United States which qualifies
60 the member for membership in the public plan or system covering the employment, but only if
61 the member does not qualify for any retirement benefits based on the employment;

62 (d) forfeited service credit in this state if the member does not qualify for an allowance
63 based on the service credit;

64 (e) full-time public service while on an approved leave of absence;

65 (f) the period of time for which disability benefits were paid if:

66 (i) the member was receiving:

67 (A) long-term disability benefits;

68 (B) short-term disability benefits; or

69 (C) worker's compensation disability benefits; and

70 (ii) the member's employer had not entered into a benefit protection contract under
71 Section 49-11-404 during the period the member was disabled due to sickness or accident; or

72 (g) employment covered by a Teachers Insurance and Annuity Association of America
73 retirement plan if the member forfeits any retirement benefit from that retirement plan for the
74 period of employment to be purchased under this Subsection (1)(g).

75 (2) A member shall have:

76 (a) at least four years of service credit before a purchase can be made under this
77 section; and

78 (b) forfeited service credit under any other retirement system or plan based on the
79 ~~[public]~~ employment for which service credit is being purchased.

80 (3) (a) To purchase credit under this section, the member, a participating employer, or a
81 member and a participating employer jointly shall make payment to the system ~~[in an]~~ under
82 which the member is currently covered.

83 (b) The amount of the payment shall be determined by the office based on a formula
84 that is:

85 (i) recommended by the actuary; and

86 (ii) adopted by the board.

87 (4) The purchase may be made through payroll deductions or through a lump sum
88 deposit based upon the present value of future payments.

89 (5) Total payment must be completed prior to the member's effective date of retirement

90 or service credit will be prorated in accordance with the amount paid.

91 (6) (a) If any of the factors used to determine the cost of a service credit purchase
92 change at or before the member's retirement date, the cost of the purchase shall be recalculated
93 at the time of retirement.

94 (b) If the recalculated cost exceeds the amount paid for the purchase, the member, a
95 participating employer, or a member and a participating employer jointly may:

96 (i) pay the increased cost, plus interest, to receive the full amount of service credit; or

97 (ii) not pay the increased cost and have the purchased service credit prorated.

98 (7) If the recalculated cost under Subsection (6) is less than the amount paid for the
99 purchase, the office shall refund the excess payment to the member or participating employer
100 who paid for the purchase.

101 (8) (a) The board may adopt rules under which a member may make the necessary
102 payments to the office for purchases under this title as permitted by federal law.

103 (b) The office may reject any payments if the office determines the tax status of the
104 system, plans, or programs would be jeopardized by allowing the payment.

105 Section 2. Section **49-11-612** is amended to read:

106 **49-11-612. Nonassignability of benefits or payments -- Exemption from legal**
107 **process.**

108 (1) Except as provided in Subsections (2), (3), and (4), the right of any member, retiree,
109 participant, or beneficiary to any retirement benefit, retirement payment, or any other
110 retirement right accrued or accruing under this title and the assets of the funds created by this
111 title are not subject to alienation or assignment by the member, retiree, participant, or their
112 beneficiaries and are not subject to attachment, execution, garnishment, or any other legal or
113 equitable process.

114 (2) The office may, upon the request of the retiree, deduct from the retiree's allowance
115 insurance premiums or other dues payable on behalf of the retiree, but only to those entities
116 that have received the deductions prior to February 1, 2002.

117 (3) (a) The office shall provide for the division of an allowance, defined contribution
118 account, continuing monthly death benefit, or refund of member contributions upon
119 termination to former spouses and family members under an order of a court of competent
120 jurisdiction with respect to domestic relations matters on file with the office.

121 (b) The court order shall specify the manner in which the allowance, defined
122 contribution account, continuing monthly death benefit, or refund of member contributions
123 shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

124 (c) Allowances, continuing monthly death benefits, and refunds of member
125 contributions split under a domestic relations order are subject to the following:

126 (i) the amount to be paid or the period for which payments shall be made under the
127 original domestic relations order may not be altered if the alteration affects the actuarial
128 calculation of the allowance;

129 (ii) payments to an alternate payee shall begin at the time the member or beneficiary
130 begins receiving payments; and

131 (iii) the alternate payee shall receive payments in the same form as allowances received
132 by the member or beneficiary.

133 (d) A court order under this section may not be issued more than 12 months after the
134 death of the member.

135 (4) In accordance with federal law, the board may deduct the required amount from any
136 benefit, payment, or other right accrued or accruing to any member of a system, plan, or
137 program under this title to offset any amount that member owes to a system, plan, or program
138 administered by the board.

139 (5) The board shall make rules to implement this section.

140 Section 3. Section **49-12-102** is amended to read:

141 **49-12-102. Definitions.**

142 As used in this chapter:

143 (1) (a) Except as provided in Subsection (1)(c), "compensation" means the total amount
144 of payments made by a participating employer to a member of this system for services rendered
145 to the participating employer, including:

146 (i) bonuses;

147 (ii) cost-of-living adjustments;

148 (iii) other payments currently includable in gross income and that are subject to Social
149 Security deductions, including any payments in excess of the maximum amount subject to
150 deduction under Social Security law;

151 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral

152 or other benefits authorized by federal law; and
153 (v) member contributions.
154 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
155 under Internal Revenue Code, Section 401(a)(17).
156 (c) "Compensation" does not include:
157 (i) the monetary value of remuneration paid in kind, including a residence or use of
158 equipment;
159 (ii) the cost of any employment benefits paid for by the participating employer;
160 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
161 otherwise ineligible for service credit;
162 (iv) any payments upon termination, including accumulated vacation, sick leave
163 payments, severance payments, compensatory time payments, or any other special payments; or
164 (v) any allowances or payments to a member for costs or expenses paid by the
165 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
166 housing costs, insurance costs, equipment costs, and dependent care costs.
167 (d) The executive director may determine if a payment not listed under this Subsection
168 (1) falls within the definition of compensation.
169 (2) "Final average salary" means the amount computed by averaging the highest five
170 years of annual compensation preceding retirement subject to Subsections (2)(a), (b), (c), and
171 (d).
172 (a) Except as provided in Subsection (2)(b), the percentage increase in annual
173 compensation in any one of the years used may not exceed the previous year's compensation by
174 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
175 of the dollar during the previous year, as measured by a United States Bureau of Labor
176 Statistics Consumer Price Index average as determined by the board.
177 (b) In cases where the participating employer provides acceptable documentation to the
178 office, the limitation in Subsection (2)(a) may be exceeded if:
179 (i) the member has transferred from another agency; or
180 (ii) the member has been promoted to a new position.
181 (c) If the member retires more than six months from the date of termination of
182 employment, the member is considered to have been in service at the member's last rate of pay

183 from the date of the termination of employment to the effective date of retirement for purposes
184 of computing the member's final average salary only.

185 (d) If the member has less than five years of service credit in this system, final average
186 salary means the average annual compensation paid to the member during the full period of
187 service credit.

188 (3) "Participating employer" means an employer which meets the participation
189 requirements of Sections 49-12-201 and 49-12-202.

190 (4) (a) "Regular full-time employee" means an employee whose term of employment
191 for a participating employer contemplates continued employment during a fiscal or calendar
192 year and whose employment normally requires an average of 20 hours or more per week,
193 except as modified by the board, and who receives benefits normally provided by the
194 participating employer.

195 (b) "Regular full-time employee" includes:

196 (i) a teacher whose term of employment for a participating employer contemplates
197 continued employment during a school year and who teaches half-time or more [~~or~~];

198 (ii) a classified school employee whose employment normally requires an average of
199 20 hours per week or more for a participating employer, regardless of benefits provided;

200 [~~(ii)~~] (iii) an officer, elective or appointive, who earns during the first full month of the
201 term of office \$500 or more, indexed as of January 1, 1990, as provided in Section 49-12-407;

202 [~~(iii)~~] (iv) a faculty member or employee of an institution of higher education who is
203 considered full-time by that institution of higher education; and

204 [~~(iv)~~] (v) an individual who otherwise meets the definition of this Subsection (4) who
205 performs services for a participating employer through an employee leasing or similar
206 arrangement.

207 (5) "System" means the Public Employees' Contributory Retirement System created
208 under this chapter.

209 (6) "Years of service credit" means:

210 (a) a period, consisting of 12 full months as determined by the board;

211 (b) a period determined by the board, whether consecutive or not, during which a
212 regular full-time employee performed services for a participating employer, including any time
213 the regular full-time employee was absent on a paid leave of absence granted by a participating

214 employer or was absent in the service of the United States government on military duty as
215 provided by this chapter; or

216 (c) the regular school year consisting of not less than eight months of full-time service
217 for a regular full-time employee of an educational institution.

218 Section 4. Section **49-13-102** is amended to read:

219 **49-13-102. Definitions.**

220 As used in this chapter:

221 (1) (a) Except as provided in Subsection (1)(c), "compensation" means the total
222 amount of payments made by a participating employer to a member of this system for services
223 rendered to the participating employer, including:

224 (i) bonuses;

225 (ii) cost-of-living adjustments;

226 (iii) other payments currently includable in gross income and that are subject to Social
227 Security deductions, including any payments in excess of the maximum amount subject to
228 deduction under Social Security law; and

229 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
230 or other benefits authorized by federal law.

231 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
232 under Internal Revenue Code, Section 401(a)(17).

233 (c) "Compensation" does not include:

234 (i) the monetary value of remuneration paid in kind, including a residence or use of
235 equipment;

236 (ii) the cost of any employment benefits paid for by the participating employer;

237 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
238 otherwise ineligible for service credit;

239 (iv) any payments upon termination, including accumulated vacation, sick leave
240 payments, severance payments, compensatory time payments, or any other special payments; or

241 (v) any allowances or payments to a member for costs or expenses paid by the
242 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
243 housing costs, insurance costs, equipment costs, and dependent care costs.

244 (d) The executive director may determine if a payment not listed under this Subsection

245 (1) falls within the definition of compensation.

246 (2) "Final average salary" means the amount computed by averaging the highest three
247 years of annual compensation preceding retirement subject to the following:

248 (a) Except as provided in Subsection (2)(b), the percentage increase in annual
249 compensation in any one of the years used may not exceed the previous year's compensation by
250 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
251 of the dollar during the previous year, as measured by a United States Bureau of Labor
252 Statistics Consumer Price Index average as determined by the board.

253 (b) In cases where the participating employer provides acceptable documentation to the
254 office, the limitation in Subsection (2)(a) may be exceeded if:

255 (i) the member has transferred from another agency; or

256 (ii) the member has been promoted to a new position.

257 (c) If the member retires more than six months from the date of termination of
258 employment and for purposes of computing the member's final average salary only, the
259 member is considered to have been in service at his last rate of pay from the date of the
260 termination of employment to the effective date of retirement.

261 (3) "Participating employer" means an employer which meets the participation
262 requirements of Sections 49-13-201 and 49-13-202.

263 (4) (a) "Regular full-time employee" means an employee whose term of employment
264 for a participating employer contemplates continued employment during a fiscal or calendar
265 year and whose employment normally requires an average of 20 hours or more per week,
266 except as modified by the board, and who receives benefits normally provided by the
267 participating employer.

268 (b) "Regular full-time employee" includes:

269 (i) a teacher whose term of employment for a participating employer contemplates
270 continued employment during a school year and who teaches half-time or more [or];

271 (ii) a classified school employee whose employment normally requires an average of
272 20 hours per week or more for a participating employer, regardless of benefits provided;

273 [(ii)] (iii) an officer, elective or appointive, who earns during the first full month of the
274 term of office \$500 or more, indexed as of January 1, 1990, as provided in Section 49-13-407;

275 [(iii)] (iv) a faculty member or employee of an institution of higher education who is

276 considered full-time by that institution of higher education; and

277 ~~(iv)~~ (v) an individual who otherwise meets the definition of this Subsection (4) who
278 performs services for a participating employer through an employee leasing or similar
279 arrangement.

280 (5) "System" means the Public Employees' Noncontributory Retirement System.

281 (6) "Years of service credit" means:

282 (a) a period, consisting of 12 full months as determined by the board;

283 (b) a period determined by the board, whether consecutive or not, during which a
284 regular full-time employee performed services for a participating employer, including any time
285 the regular full-time employee was absent on a paid leave of absence granted by a participating
286 employer or was absent in the service of the United States government on military duty as
287 provided by this chapter; or

288 (c) the regular school year consisting of not less than eight months of full-time service
289 for a regular full-time employee of an educational institution.

290 Section 5. Section **49-13-407** is amended to read:

291 **49-13-407. Annual cost-of-living adjustment.**

292 (1) The office shall make an annual cost-of-living adjustment to:

293 (a) an original allowance paid under Section 49-13-402 or 49-13-405, if the allowance
294 has been paid for at least one year; and

295 (b) an original payment made to an alternate payee under a domestic relations order, if
296 the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

297 (2) (a) The original allowance shall be increased by the annual increase in the
298 Consumer Price Index up to a maximum of 4%.

299 (b) Annual increases in the Consumer Price Index in excess of 4% shall be
300 accumulated and used in subsequent adjustments when the annual increase in the Consumer
301 Price Index is less than 4%.

302 (3) The Consumer Price Index used in calculating adjustments ~~may~~ shall be a United
303 States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

304 (4) The cost-of-living adjustment made under this section may not decrease the
305 allowance.

306 Section 6. Section **49-14-203** is amended to read:

307 **49-14-203. Exemption of certain employees from coverage.**

308 (1) A public safety service employee serving as the Commissioner of Public Safety, or
309 as the elected or appointed sheriff or chief of police of a public safety organization, is excluded
310 from coverage under this system if that public safety service employee files a formal written
311 request seeking exemption.

312 (2) Except as provided in Subsection (3), the public safety service employee may not
313 continue employment with the same participating employer and receive an allowance from the
314 office based on public safety service at the same time.

315 (3) The Commissioner of Public Safety or an elected sheriff who is eligible to retire
316 under Section 49-14-401 may:

317 (a) retire from this system and receive an allowance;

318 (b) continue in the elected or appointed position; and

319 (c) file for the exemption under Subsection (1).

320 Section 7. Section **49-19-501** is amended to read:

321 **49-19-501. Death of member or retiree -- Surviving spouse benefit.**

322 (1) Upon the death of a governor or legislator who has not yet retired and who has
323 completed four or more years in the elected office, the member's spouse at the time of death
324 shall receive an allowance equal to 50% of the allowance to which the governor or legislator
325 would have been entitled upon reaching age 65, if the governor or legislator and surviving
326 spouse had been married at least six months.

327 (2) Upon the death of a governor or legislator receiving an allowance under this plan,
328 the member's spouse at the time of death is entitled to an allowance equal to 50% of the
329 allowance being paid to the member at the time of death.

330 Section 8. Section **49-20-409** is amended to read:

331 **49-20-409. Long-term disability -- Cost of health coverage waiver.**

332 (1) Under the direction of the board, the program shall provide [~~a waiver of the cost of~~]
333 for health insurance coverage for state employees who receive a monthly disability benefit
334 under Title 49, Chapter 21, Public Employees' Long-Term Disability Act.

335 (2) A [~~participating employer~~] risk pool, other than the state risk pool, may elect to
336 provide a waiver for its employees similar to the waiver provided under Subsection (1).

Legislative Review Note
as of 10-7-05 9:28 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-20-05 1:46 PM

The Retirement and Independent Entities Interim Committee recommended this bill.