

**Senator Darin G. Peterson** proposes the following substitute bill:

**POST RETIREMENT EMPLOYMENT**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Glenn A. Donnelson**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending reemployment restrictions for certain retirees.

**Highlighted Provisions:**

This bill:

- ▶ defines "agency" to clarify the applicability of reemployment restrictions for certain retirees;
- ▶ requires that a retiree's retirement allowance be cancelled if the retiree is reemployed on a full-time basis unless a total separation from employment with the same agency has occurred for a period of not less than six consecutive months after the date of retirement;
- ▶ allows retirees from a school district to return to work on a full-time basis in the same school district and to continue to collect the retiree's retirement allowance if:
  - the retiree is hired in a teaching position that the school district has been unable to fill with a qualified candidate; and
  - the retiree may not earn additional service credits unless the retiree's retirement is canceled; and
- ▶ makes technical changes.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **49-11-102**, as last amended by Chapter 116, Laws of Utah 2005

33 **49-11-504**, as last amended by Chapter 116, Laws of Utah 2005



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

36 Section 1. Section **49-11-102** is amended to read:

37 **49-11-102. Definitions.**

38 As used in this title:

39 (1) (a) "Active member" means a member who is employed or who has been employed  
40 by a participating employer within the previous 120 days.

41 (b) "Active member" does not include retirees.

42 (2) "Actuarial equivalent" means a benefit of equal value when computed upon the  
43 basis of mortality tables as recommended by the actuary and adopted by the executive director,  
44 including regular interest.

45 (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and  
46 adopted by the board upon which the funding of system costs and benefits are computed.

47 (4) (a) "Agency" means:

48 [~~(a)~~] (i) a department, division, agency, office, authority, commission, board,  
49 institution, or hospital of the state;

50 [~~(b)~~] (ii) a county, municipality, school district, or special district;

51 [~~(c)~~] (iii) a state college or university; or

52 [~~(d)~~] (iv) any other participating employer.

53 (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a  
54 subdivision of another entity listed under Subsection (4)(a).

55 (5) "Allowance" means the pension plus the annuity, including any cost of living or  
56 other authorized adjustments to the pension and annuity.

57 (6) "Alternate payee" means a member's former spouse or family member eligible to  
58 receive payments under a Domestic Relations Order in compliance with Section 49-11-612.

59 (7) "Annuity" means monthly payments derived from member contributions.

60 (8) "Appointive officer" means an employee appointed to a position for a definite and  
61 fixed term of office by official and duly recorded action of a participating employer whose  
62 appointed position is designated in the participating employer's charter, creation document, or  
63 similar document, and who earns during the first full month of the term of office \$500 or more,  
64 indexed as of January 1, 1990, as provided in Section 49-12-407.

65 (9) "Beneficiary" means any person entitled to receive a payment under this title  
66 through a relationship with or designated by a member, participant, covered individual, or  
67 alternate payee of a defined contribution plan.

68 (10) "Board" means the Utah State Retirement Board established under Section  
69 49-11-202.

70 (11) "Board member" means a person serving on the Utah State Retirement Board as  
71 established under Section 49-11-202.

72 (12) "Contributions" means the total amount paid by the participating employer and the  
73 member into a system or to the Utah Governors' and Legislators' Retirement Plan under  
74 Chapter 19, Utah Governor's and Legislators' Retirement Act.

75 (13) "Council member" means a person serving on the Membership Council  
76 established under Section 49-11-202.

77 (14) "Covered individual" means any individual covered under Chapter 20, Public  
78 Employees' Benefit and Insurance Program Act.

79 (15) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16,  
80 17, 18, and 19.

81 (16) "Defined contribution" or "defined contribution plan" means any defined  
82 contribution plan authorized under the Internal Revenue Code and administered by the board.

83 (17) "Educational institution" means a political subdivision or instrumentality of the  
84 state or a combination thereof primarily engaged in educational activities or the administration  
85 or servicing of educational activities, including:

86 (a) the State Board of Education and its instrumentalities;

87 (b) any institution of higher education and its branches;

88 (c) any school district and its instrumentalities;  
89 (d) any vocational and technical school; and  
90 (e) any entity arising out of a consolidation agreement between entities described under  
91 this Subsection (17).

92 (18) (a) "Employer" means any department, educational institution, or political  
93 subdivision of the state eligible to participate in a government-sponsored retirement system  
94 under federal law.

95 (b) "Employer" may also include an agency financed in whole or in part by public  
96 funds.

97 (19) "Exempt employee" means an employee working for a participating employer:

98 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,  
99 49-14-203, 49-15-203, or 49-16-203; and

100 (b) for whom a participating employer is not required to pay contributions or  
101 nonelective contributions.

102 (20) "Final average monthly salary" means the amount computed by dividing the  
103 compensation received during the final average salary period under each system by the number  
104 of months in the final average salary period.

105 (21) "Fund" means any fund created under this title for the purpose of paying benefits  
106 or costs of administering a system, plan, or program.

107 (22) (a) "Inactive member" means a member who has not been employed by a  
108 participating employer for a period of at least 120 days.

109 (b) "Inactive member" does not include retirees.

110 (23) (a) "Member" means a person, except a retiree, with contributions on deposit with  
111 a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, or with a  
112 terminated system.

113 (b) "Member" also includes leased employees within the meaning of Section 414(n)(2)  
114 of the Internal Revenue Code, if the employees have contributions on deposit with the office.  
115 If leased employees constitute less than 20% of the participating employer's work force that is  
116 not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code,  
117 "member" does not include leased employees covered by a plan described in Section 414(n)(5)  
118 of the federal Internal Revenue Code.

119 (24) "Member contributions" means the sum of the contributions paid to a system or  
120 the Utah Governors' and Legislators' Retirement Plan, including refund interest if allowed by a  
121 system, and which are made by:

122 (a) the member; and

123 (b) the participating employer on the member's behalf under Section 414(h) of the  
124 Internal Revenue Code.

125 (25) "Nonelective contribution" means an amount contributed by a participating  
126 employer into a participant's defined contribution account.

127 (26) "Office" means the Utah State Retirement Office.

128 (27) "Participant" means an individual with voluntary deferrals or nonelective  
129 contributions on deposit with the defined contribution plans administered under this title.

130 (28) "Participating employer" means a participating employer, as defined by Chapters  
131 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public funds which  
132 is participating in a system or plan as of January 1, 2002.

133 (29) "Pension" means monthly payments derived from participating employer  
134 contributions.

135 (30) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by  
136 Chapter 19 or the defined contribution plans created under Section 49-11-801.

137 (31) (a) "Political subdivision" means any local government entity, including cities,  
138 towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally  
139 separate and distinct from the state and only if its employees are not by virtue of their  
140 relationship to the entity employees or the state.

141 (b) "Political subdivision" includes special districts or authorities created by the  
142 Legislature or by local governments, including the office.

143 (c) "Political subdivision" does not include a project entity created under Title 11,  
144 Chapter 13, Interlocal Cooperation Act.

145 (32) "Program" means the Public Employees' Insurance Program created under Chapter  
146 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'  
147 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term  
148 Disability Act.

149 (33) "Public funds" means those funds derived, either directly or indirectly, from public

150 taxes or public revenue, dues or contributions paid or donated by the membership of the  
151 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,  
152 the governmental, educational, and social programs and systems of the state or its political  
153 subdivisions.

154 (34) "Refund interest" means the amount accrued on member contributions at a rate  
155 adopted by the board.

156 (35) "Retiree" means an individual who has qualified for an allowance under this title.

157 (36) "Retirement" means the status of an individual who has become eligible, applies  
158 for, and is entitled to receive an allowance under this title.

159 (37) "Retirement date" means the date selected by the member on which the member's  
160 retirement becomes effective with the office.

161 (38) "Service credit" means:

162 (a) the period during which an employee is employed and compensated by a  
163 participating employer and meets the eligibility requirements for membership in a system or the  
164 Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are  
165 paid to the office; and

166 (b) periods of time otherwise purchasable under this title.

167 (39) "System" means the individual retirement systems created by Chapters 12, 13, 14,  
168 15, 16, 17, and 18.

169 (40) "Voluntary deferrals" means an amount contributed by a participant into that  
170 participant's defined contribution account.

171 Section 2. Section **49-11-504** is amended to read:

172 **49-11-504. Reemployment of a retiree -- Restrictions.**

173 (1) As used in this section, "full-time" employment means employment requiring 20  
174 hours of work per week or more or at least a half-time teaching contract.

175 [~~(1)~~] (2) A person who retires from a nonparticipating employer is not subject to any  
176 postretirement restrictions under this title.

177 [~~(2)~~] (3) A retiree of an agency who returns to work at a different agency:

178 (a) is not subject to any postretirement restrictions under this section; and

179 (b) may not earn additional service credit.

180 [~~(3)~~] For the purposes of Subsections (4) and (5), "full-time" employment means

181 employment requiring 20 hours of work per week or more or at least a half-time teaching  
182 contract.]

183 (4) [~~A retiree of an agency who is reemployed on a full-time basis by the same agency~~  
184 ~~within six months of the date of retirement]~~ Except as provided under Subsection (10), unless a  
185 total separation from employment with the same agency has occurred for a period of not less  
186 than six consecutive months after the date of retirement, a retiree of an agency who is  
187 reemployed, on a full-time basis or on another basis that is equivalent to a full-time basis, by  
188 the same agency is subject to the following:

189 (a) the agency shall immediately notify the office;

190 (b) the office shall cancel the retiree's allowance and if the retiree is reemployed on a  
191 full-time basis, reinstate the retiree to active member status;

192 (c) the allowance cancellation and reinstatement to active member status is effective on  
193 the first day of the month following the date of reemployment;

194 (d) the reinstated retiree may not retire again with a recalculated benefit for a two-year  
195 period from the date of cancellation of the original allowance, and if the retiree retires again  
196 within the two-year period, the original allowance shall be resumed; and

197 (e) a reinstated retiree retiring after the two-year period shall be credited with the  
198 service credit in the retiree's account at the time of the first retirement and from that time shall  
199 be treated as a member of a system, including the accrual of additional service credit, but  
200 subject to recalculation of the allowance under Subsection (9).

201 (5) A retiree of an agency who is reemployed by the same agency within six months of  
202 retirement on a less than full-time basis by the same agency is subject to the following:

203 (a) the retiree may earn, without penalty, compensation from that position which is not  
204 in excess of the exempt earnings permitted by Social Security;

205 (b) if a retiree receives compensation in a calendar year in excess of the Social Security  
206 limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;

207 (c) the effective date of a suspension and reinstatement of an allowance shall be set by  
208 the office; and

209 (d) any suspension of a retiree's allowance under this Subsection (5) shall be applied  
210 on a calendar year basis.

211 (6) [~~For six months immediately following]~~ After retirement, the retiree and the

212 participating employer shall:

213 (a) maintain an accurate record of gross earnings in employment;

214 (b) report the gross earnings at least monthly to the office;

215 (c) immediately notify the office in writing of any postretirement earnings under

216 Subsection (4); and

217 (d) immediately notify the office in writing whether postretirement earnings equal or

218 exceed the exempt earnings under Subsection (5).

219 (7) A retiree of an agency who is reemployed by the same agency after [~~six months~~  
220 from] a total separation from employment with the same agency for a period of not less than  
221 six consecutive months after the retirement date;

222 (a) is not subject to any postretirement restrictions under this title; and

223 (b) may not earn additional service credit.

224 (8) If a participating employer hires a nonexempt retiree who may not earn additional  
225 service credit under this section, the participating employer shall contribute the same  
226 percentage of a retiree's salary that the participating employer would have been required to  
227 contribute if the retiree were an active member, up to the amount allowed by federal law, to a  
228 retiree designated:

229 (a) defined contribution plan administered by the board, if the participating employer  
230 participates in the defined contribution plan administered by the board; or

231 (b) defined contribution plan offered by the participating employer if the participating  
232 employer does not participate in a defined contribution plan administered by the board.

233 (9) Notwithstanding any other provision of this section, a retiree who has returned to  
234 work, accrued additional service credit, and again retires shall have the retiree's allowance  
235 recalculated using:

236 (a) the formula in effect at the date of the retiree's original retirement for all service  
237 credit accrued prior to that date; and

238 (b) the formula in effect at the date of the subsequent retirement for all service credit  
239 accrued between the first and subsequent retirement dates.

240 (10) Notwithstanding the provisions of Subsection (4), a retiree who returns to work on  
241 a full-time basis in the same school district may continue to collect the retiree's retirement  
242 allowance if:



243           (a) the school district certifies to the office that the retiree is hired and remains in a  
244 teaching position, for which the school district, after completing its normal open recruitment  
245 and hiring process, has been unable to fill the teaching position with a qualified candidate;

246           (b) the retiree does not earn additional service credits for any period in which the  
247 retiree receives a retirement allowance; and

248           (c) the retiree's retirement is canceled, if the retiree wishes to earn additional service  
249 credits.

250           ~~(10)~~ (11) This section does not apply to elected positions.

251           ~~(11)~~ (12) The board may make rules to implement this section.

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**H.B. 260 1st Sub. (Buff) - Post Retirement Employment**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations. Depending on how the legislation affects the retirement patterns of school district employees, there is a potential actuarial cost to the Utah Retirement Systems. However, this cost is currently indeterminable.

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**Individual, Business and/or Local Impact**

If this bill is enacted, some employees covered by the Utah Retirement Systems may be subject to different post-retirement employment restrictions.

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