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RETIREMENT BENEFIT AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act to provide for an optional defined contribution retirement plan.

Highlighted Provisions:

This bill:

- ▶ defines the term "defined benefit";
- ▶ allows new employees hired beginning July 1, 2007 who are eligible to earn service credit under any state retirement system to make a one-time election to:
 - become a member of a defined benefit retirement system for which the employee is eligible; or
 - receive a defined contribution in lieu of a defined benefit;
- ▶ allows current employees who are eligible to earn service credit under any state retirement system to make a one-time election to:
 - stay a member of a defined benefit retirement system; or
 - receive a defined contribution in lieu of a defined benefit;
- ▶ provides that earned service credit and contributions in a defined benefit system remain in the system until the person retires;
- ▶ provides that, subject to federal limitations, the defined contribution amount is at least the same percentage of salary that is being contributed for similar employees in a defined benefit system including any supplemental contributions;

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- 28 ▶ provides a minimum defined contribution amount;
- 29 ▶ provides that the defined contribution amount for a governor or a legislator is the
- 30 same percentage of the governor's or legislator's salary that is provided to an active
- 31 member of the Public Employees' Noncontributory Retirement System; and
- 32 ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill takes effect on July 1, 2007.

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **49-11-102**, as last amended by Chapter 116, Laws of Utah 2005

40 **49-11-801**, as renumbered and amended by Chapter 250, Laws of Utah 2002

41 ENACTS:

42 **49-11-803**, Utah Code Annotated 1953

43 **49-11-804**, Utah Code Annotated 1953



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

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

47 **49-11-102. Definitions.**

48 As used in this title:

49 (1) (a) "Active member" means a member who is employed or who has been employed

50 by a participating employer within the previous 120 days.

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

52 (2) "Actuarial equivalent" means a benefit of equal value when computed upon the

53 basis of mortality tables as recommended by the actuary and adopted by the executive director,

54 including regular interest.

55 (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and

56 adopted by the board upon which the funding of system costs and benefits are computed.

57 (4) "Agency" means:

58 (a) a department, division, agency, office, authority, commission, board, institution, or

59 hospital of the state;

60 (b) a county, municipality, school district, or special district;

61 (c) a state college or university; or

62 (d) any other participating employer.

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

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

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

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

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

76 (10) "Board" means the Utah State Retirement Board established under Section
77 49-11-202.

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

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

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

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

87 (15) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16,
88 17, 18, and 19.

89 (16) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a

90 system or plan offered under this title to provide a specified allowance to a retiree or a retiree's
91 spouse after retirement that is based on a set formula involving years of service, final average
92 monthly salary, and a retirement multiplier.

93 [~~16~~] (17) "Defined contribution" or "defined contribution plan" means any defined
94 contribution plan authorized under the Internal Revenue Code and administered by the board.

95 [~~17~~] (18) "Educational institution" means a political subdivision or instrumentality of
96 the state or a combination thereof primarily engaged in educational activities or the
97 administration or servicing of educational activities, including:

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

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

100 (c) any school district and its instrumentalities;

101 (d) any vocational and technical school; and

102 (e) any entity arising out of a consolidation agreement between entities described under
103 this Subsection [~~17~~] (18).

104 [~~18~~] (19) (a) "Employer" means any department, educational institution, or political
105 subdivision of the state eligible to participate in a government-sponsored retirement system
106 under federal law.

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

109 [~~19~~] (20) "Exempt employee" means an employee working for a participating
110 employer:

111 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,
112 49-14-203, 49-15-203, or 49-16-203; and

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

115 [~~20~~] (21) "Final average monthly salary" means the amount computed by dividing the
116 compensation received during the final average salary period under each system by the number
117 of months in the final average salary period.

118 [~~21~~] (22) "Fund" means any fund created under this title for the purpose of paying
119 benefits or costs of administering a system, plan, or program.

120 [~~22~~] (23) (a) "Inactive member" means a member who has not been employed by a

121 participating employer for a period of at least 120 days, or a member who elects to make a
122 switch under Section 49-11-803 from a defined benefit system to a defined contribution plan.

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

124 [~~23~~] (24) (a) "Member" means a person, except a retiree, with contributions on
125 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,
126 or with a terminated system.

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

133 [~~24~~] (25) "Member contributions" means the sum of the contributions paid to a
134 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if
135 allowed by a system, and which are made by:

136 (a) the member; and

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

139 [~~25~~] (26) "Nonelective contribution" means an amount contributed by a participating
140 employer into a participant's defined contribution account.

141 [~~26~~] (27) "Office" means the Utah State Retirement Office.

142 [~~27~~] (28) "Participant" means an individual with voluntary deferrals or nonelective
143 contributions on deposit with the defined contribution plans administered under this title.

144 [~~28~~] (29) "Participating employer" means a participating employer, as defined by
145 Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public
146 funds which is participating in a system or plan as of January 1, 2002.

147 [~~29~~] (30) "Pension" means monthly payments derived from participating employer
148 contributions.

149 [~~30~~] (31) "Plan" means the Utah Governors' and Legislators' Retirement Plan created
150 by Chapter 19 or the defined contribution plans created under Section 49-11-801.

151 [~~31~~] (32) (a) "Political subdivision" means any local government entity, including

152 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is
153 legally separate and distinct from the state and only if its employees are not, by virtue of their
154 relationship to the entity, employees ~~[or]~~ of the state.

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

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

159 ~~[(32)]~~ (33) "Program" means the Public Employees' Insurance Program created under
160 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'
161 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term
162 Disability Act.

163 ~~[(33)]~~ (34) "Public funds" means those funds derived, either directly or indirectly, from
164 public taxes or public revenue, dues or contributions paid or donated by the membership of the
165 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,
166 the governmental, educational, and social programs and systems of the state or its political
167 subdivisions.

168 ~~[(34)]~~ (35) "Refund interest" means the amount accrued on member contributions at a
169 rate adopted by the board.

170 ~~[(35)]~~ (36) "Retiree" means an individual who has qualified for an allowance under this
171 title.

172 ~~[(36)]~~ (37) "Retirement" means the status of an individual who has become eligible,
173 applies for, and is entitled to receive an allowance under this title.

174 ~~[(37)]~~ (38) "Retirement date" means the date selected by the member on which the
175 member's retirement becomes effective with the office.

176 ~~[(38)]~~ (39) "Service credit" means:

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

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

182 ~~[(39)]~~ (40) "System" means the individual retirement systems created by Chapters 12,

183 13, 14, 15, 16, 17, and 18.

184 [~~40~~] (41) "Voluntary deferrals" means an amount contributed by a participant into
185 that participant's defined contribution account.

186 Section 2. Section **49-11-801** is amended to read:

187 **49-11-801. Defined contribution plans authorized -- Subject to federal and state**
188 **laws -- Rules to implement this provision -- Costs of administration -- Limitations on**
189 **eligibility -- Protection of tax status.**

190 (1) (a) The board [~~may~~] shall establish and administer defined contribution plans
191 established under the Internal Revenue Code.

192 (b) Voluntary deferrals and nonelective contributions shall be permitted according to
193 the provisions of these plans as established by the board.

194 (c) The defined contribution account balance is vested in the participant.

195 (2) (a) Voluntary deferrals and nonelective contributions shall be posted to the
196 participant's account.

197 (b) Participants may direct the investment of their account in the investment options
198 established by the board and in accordance with federal and state law.

199 (3) (a) The board may make rules and create plan documents to implement and
200 administer this section.

201 (b) The board may adopt rules under which a participant may put money into a defined
202 contribution plan as permitted by federal law.

203 (c) The office may reject any payments if the office determines the tax status of the
204 systems, plans, or programs would be jeopardized by allowing the payment.

205 (d) Costs of administration shall be paid as established by the board.

206 (4) Voluntary deferrals and nonelective contributions may be invested separately or in
207 conjunction with the Utah State Retirement Investment Fund.

208 (5) The board or office may take actions necessary to protect the tax qualified status of
209 the systems, plans, and programs under its control, including the movement of individuals from
210 defined contribution plans to defined benefit systems or the creation of excess benefit plans
211 authorized by federal law.

212 (6) The office may, at its sole discretion, correct errors made in the administration of
213 its defined contribution plans.

214 Section 3. Section **49-11-803** is enacted to read:

215 **49-11-803. Election for defined benefit or defined contribution retirement -- New**
216 **employees -- Existing employees -- Existing contributions remain -- Future service**
217 **credits.**

218 (1) Beginning July 1, 2007, a person who initially enters employment with a
219 participating employer and who is eligible to earn service credit under any system or plan under
220 this title shall make an election to:

221 (a) become a member of a defined benefit retirement system or plan for which the new
222 employee is eligible under this title; or

223 (b) participate in a qualified defined contribution plan offered by the participating
224 employer in accordance with this section and Section 49-11-804 in lieu of a defined benefit.

225 (2) Beginning July 1, 2007, a member who was employed with a participating
226 employer prior to July 1, 2007, and who is eligible to earn service credit under any system or
227 plan under this title may make an election to:

228 (a) continue to earn service credits and have contributions made on behalf of the
229 member by remaining in the current defined benefit retirement system or plan in which the
230 employee is eligible to be a member under this title; or

231 (b) participate in a qualified defined contribution plan offered by the participating
232 employer in accordance with this section and Section 49-11-804 in lieu of a defined benefit.

233 (3) The election made under Subsection (1)(b) or (2)(b) is final and the person may not
234 make any further election under Subsection (1) or (2).

235 (4) For a member who makes an election to switch from a defined benefit system or
236 plan under this title to a qualified defined contribution plan:

237 (a) the service credits and contributions made on behalf of the member shall remain on
238 deposit with the system until the member is eligible and applies for retirement;

239 (b) except as provided under Subsection (4)(c), the member may purchase, make
240 redeposits, or make adjustments to service credits and contributions if allowed under this title;
241 and

242 (c) the years of service in employment under the qualified defined contribution plan
243 under this section and Section 49-11-804:

244 (i) may only be counted as years of service for eligibility for retirement purposes under

245 a defined benefit system or plan;

246 (ii) are not purchasable for service credit under this title; and

247 (iii) may not be used to earn additional service credits or to calculate the member's
248 final average monthly salary in the member's defined benefit system or plan.

249 Section 4. Section **49-11-804** is enacted to read:

250 **49-11-804. Contributions -- Rates -- Match -- Amendment by the Legislature.**

251 (1) For a person who makes an election under Section 49-11-803 to participate in a
252 qualified defined contribution plan, the provisions of this section apply.

253 (2) (a) Unless otherwise specified under Subsection (2)(b) or (3) and up to the amount
254 allowed by federal law, the participating employer shall contribute:

255 (i) not less than the same percentage of a participant's salary that the participating
256 employer would have been required to contribute if the participant were an active member of a
257 defined benefit system or plan to which the participant would be eligible if the participant had
258 made an election under Section 49-11-803 to participate in a defined benefit system or plan;
259 and

260 (ii) the same percentage of the participant's salary, if any, that is contributed by the
261 participating employer to a supplemental defined contribution plan for employees in a defined
262 benefit system or plan to which the participant would be eligible if the participant had made an
263 election under Section 49-11-803 to participate in a defined benefit system or plan.

264 (b) Notwithstanding the provisions of Subsection (2)(a), the minimum contribution to a
265 qualified contribution plan under this section by a participating employer is the same
266 percentage of a participant's salary that was contributed as of January 1, 2007 as follows:

267 (i) not less than the same percentage of a participant's salary that the participating
268 employer would have been required to contribute if the participant were an active member of a
269 defined benefit system or plan to which the participant would be eligible if the participant had
270 made an election under Section 49-11-803 to participate in a defined benefit system or plan;
271 and

272 (ii) the same percentage of the participant's salary, if any, that is contributed by the
273 participating employer to a supplemental defined contribution plan for employees in a defined
274 benefit system or plan to which the participant would be eligible if the participant had made an
275 election under Section 49-11-803 to participate in a defined benefit system or plan.

276 (c) The participating employer's contribution under Subsection (2)(a) or (b) shall be
277 made to an employee designated:

278 (i) qualified defined contribution plan administered by the board, if the participating
279 employer participates in the qualified defined contribution plan administered by the board; or

280 (ii) qualified defined contribution plan offered by the participating employer if the
281 participating employer does not participate in a qualified defined contribution plan
282 administered by the board.

283 (3) Subject to federal limitations, in the case of a governor or a legislator, the
284 participating employer shall contribute the same percentage of the governor's or legislator's
285 salary that is provided to a state employee who is an active member of the Public Employees'
286 Noncontributory Retirement System.

287 Section 5. **Effective date.**

288 This bill takes effect on July 1, 2007.

Legislative Review Note
as of 2-6-07 8:00 AM

Office of Legislative Research and General Counsel

H.B. 377 - Retirement Benefit Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will likely require additional appropriations to cover retirement contribution rate increases. The rate increase is associated with decreasing the population in the Utah Retirement Systems (URS) defined benefit retirement plans and the cost of benefits to those employees who otherwise would have left before the four year vesting period. However, in addition to the information received from URS, an official actuarial study is required before a reliable estimate of this cost is available. As an example, if all new state hires, but no current employees, choose to participate in a defined contribution retirement plan rather than a defined benefit plan, the ongoing cost will be approximately \$18.4 million distributed from all funding sources among all state agencies, higher education, and public education. Costs could be higher or lower depending on factors such as employee selection patterns and the rate of population decrease in the defined benefit pool. These cost adjustments will be reflected in new rates from the Utah Retirement Systems to be implemented in the 2008 General Legislative Session.

Individual, Business and/or Local Impact

Enactment of this bill will likely require local entities participating in the Utah Retirement Systems to experience increases in retirement contribution rates associated with decreasing the population in the defined benefit retirement plans. However, in addition to the information received from URS, an official actuarial study is required before a reliable estimate of the cost is available.

Current employees and new hires of entities participating in the Utah Retirement Systems will be able to make a one-time election to participate in a defined contribution retirement plan rather than a defined benefit retirement plan.

Investment risks and rewards will rest with employees who elect a defined contribution plan as they will be responsible for investment and growth of their retirement accounts.