

1                                   **STATE RETIREMENT SYSTEM**  
2                                   **PARTICIPATION FOR CHARTER SCHOOLS**

3                                   2009 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Christine F. Watkins**

6                                   Senate Sponsor: David P. Hinkins

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the State System of Public Education Code and the Utah State  
11   Retirement and Insurance Benefit Act to amend employee benefit provisions for  
12   charter schools.

13   **Highlighted Provisions:**

14           This bill:

- 15           ▶ allows a charter school that made an election of nonparticipation in the state  
16   retirement systems for its employees to make a one-time, irrevocable retraction of  
17   the election of nonparticipation; and  
18           ▶ makes technical corrections.

19   **Monies Appropriated in this Bill:**

20           None

21   **Other Special Clauses:**

22           None

23   **Utah Code Sections Affected:**

24   AMENDS:

25           **49-12-202**, as last amended by Laws of Utah 2005, Chapter 71

26           **49-13-202**, as last amended by Laws of Utah 2005, Chapter 71

27           **53A-1a-512**, as last amended by Laws of Utah 2005, Chapters 285 and 291

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

30 Section 1. Section 49-12-202 is amended to read:

31 **49-12-202. Participation of employers -- Limitations -- Exclusions -- Admission**  
32 **requirements -- Exceptions -- Nondiscrimination requirements.**

33 (1) (a) Unless excluded under Subsection (2) or (3), an employer is a participating  
34 employer and may not withdraw from participation in this system.

35 (b) In addition to their participation in this system, participating employers may  
36 provide or participate in public or private retirement, supplemental or defined contribution  
37 plan, either directly or indirectly, for their employees.

38 (2) The following employers may be excluded from participation in this system:

39 ~~[(2)]~~ (a) ~~[An]~~ an employer not initially admitted or included as a participating  
40 employer in this system prior to January 1, 1982~~[, may be excluded from participation in this~~  
41 ~~system]~~ if:

42 ~~[(a)]~~ (i) the employer elects not to provide or participate in any type of private or  
43 public retirement, supplemental or defined contribution plan, either directly or indirectly, for  
44 its employees, except for Social Security; or

45 ~~[(b)]~~ (ii) the employer offers another collectively bargained retirement benefit and has  
46 continued to do so on an uninterrupted basis since that date~~[:]~~;

47 ~~[(3)]~~ (b) ~~[An]~~ an employer that is a charter school sponsored by the State Board of  
48 Education or a school district that makes an election of nonparticipation in accordance with  
49 Section 53A-1a-512 ~~[may be excluded as a participating employer:]~~ unless the charter school  
50 makes a one-time, irrevocable retraction of the election of nonparticipation in accordance with  
51 Subsection 53A-1a-512(9).

52 (4) An employer who did not become a participating employer in this system prior to  
53 July 1, 1986, may not participate in this system.

54 (5) If a participating employer purchases service credit on behalf of regular full-time  
55 employees for service rendered prior to the participating employer's admission to this system,  
56 the service credit shall be purchased in a nondiscriminatory manner on behalf of all current  
57 and former regular full-time employees who were eligible for service credit at the time service

58 was rendered.

59 Section 2. Section 49-13-202 is amended to read:

60 **49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission**  
61 **requirements -- Nondiscrimination requirements.**

62 (1) (a) Unless excluded under Subsection (2) or (3), an employer is a participating  
63 employer and may not withdraw from participation in this system.

64 (b) In addition to their participation in this system, participating employers may  
65 provide or participate in any additional public or private retirement, supplemental or defined  
66 contribution plan, either directly or indirectly, for their employees.

67 (2) The following employers may be excluded from participation in this system:

68 ~~[(2)]~~ (a) ~~[An]~~ an employer not initially admitted or included as a participating  
69 employer in this system prior to January 1, 1982~~[, may be excluded from participation in this~~  
70 ~~system]~~ if:

71 ~~[(a)]~~ (i) the employer elects not to provide or participate in any type of private or  
72 public retirement, supplemental or defined contribution plan, either directly or indirectly, for  
73 its employees, except for Social Security; or

74 ~~[(b)]~~ (ii) the employer offers another collectively bargained retirement benefit and has  
75 continued to do so on an uninterrupted basis since that date~~[-];~~

76 ~~[(3)]~~ (b) ~~[An]~~ an employer that is a charter school sponsored by the State Board of  
77 Education or a school district that makes an election of nonparticipation in accordance with  
78 Section 53A-1a-512 ~~[shall be excluded as a participating employer.]~~ unless the charter school  
79 makes a one-time, irrevocable retraction of the election of nonparticipation in accordance with  
80 Subsection 53A-1a-512(9).

81 (4) If an employer, except an employer that maintains a collectively bargained plan  
82 under Subsection (2)(b), elects at any time to provide or participate in any type of public or  
83 private retirement, supplemental or defined contribution plan, either directly or indirectly,  
84 except for Social Security, the employer shall be a participating employer in this system.

85 (5) (a) Any employer may by resolution of its governing body apply for admission to

86 this system.

87 (b) Upon approval of the board, the employer is a participating employer in this  
88 system and is subject to this title.

89 (6) If a participating employer purchases service credit on behalf of regular full-time  
90 employees for service rendered prior to the participating employer's admission to this system,  
91 the service credit shall be purchased in a nondiscriminatory manner on behalf of all current  
92 and former regular full-time employees who were eligible for service credit at the time service  
93 was rendered.

94 Section 3. Section **53A-1a-512** is amended to read:

95 **53A-1a-512. Employees of charter schools.**

96 (1) A charter school shall select its own employees.

97 (2) The school's governing body shall determine the level of compensation and all  
98 terms and conditions of employment, except as otherwise provided in Subsections (7) and (8)  
99 and under this part.

100 (3) The following statutes governing public employees and officers do not apply to  
101 charter schools:

102 (a) Chapter 8, Utah Orderly School Termination Procedures Act;

103 (b) Chapter 10, Educator Evaluation; and

104 (c) Title 52, Chapter 3, Prohibiting Employment of Relatives.

105 (4) (a) To accommodate differentiated staffing and better meet student needs, a charter  
106 school, under rules adopted by the State Board of Education, shall employ teachers who:

107 (i) are licensed; or

108 (ii) on the basis of demonstrated competency, would qualify to teach under alternative  
109 certification or authorization programs.

110 (b) The school's governing body shall disclose the qualifications of its teachers to the  
111 parents of its students.

112 (5) State Board of Education rules governing the licensing or certification of  
113 administrative and supervisory personnel do not apply to charter schools.

114 (6) (a) An employee of a school district may request a leave of absence in order to  
115 work in a charter school upon approval of the local school board.

116 (b) While on leave, the employee may retain seniority accrued in the school district  
117 and may continue to be covered by the benefit program of the district if the charter school and  
118 the locally elected school board mutually agree.

119 (7) Except as provided under Subsection (8), an employee of a charter school shall be  
120 a member of a retirement system under Title 49, Utah State Retirement and Insurance Benefit  
121 Act.

122 (8) (a) At the time of application for a charter school, whether the chartering entity is  
123 the State Charter School Board or a school district, a proposed charter school may make an  
124 election of nonparticipation as an employer for retirement programs under Title 49, Chapter  
125 12, Public Employees' Contributory Retirement Act and under Title 49, Chapter 13, Public  
126 Employees' Noncontributory Retirement Act.

127 (b) A charter school that was approved prior to July 1, 2004 may make an election of  
128 nonparticipation prior to December 31, 2004.

129 (c) An election provided under this Subsection (8):

130 (i) ~~[is a one-time election]~~ shall be made at the time specified under Subsection (8)(a)  
131 or (b);

132 (ii) shall be documented by a resolution adopted by the governing body of the charter  
133 school;

134 ~~[(iii) is irrevocable; and]~~

135 (iii) is in effect unless the charter school makes an irrevocable retraction of the  
136 election of nonparticipation in accordance with Subsection (9); and

137 (iv) applies to the charter school as the employer and to all employees of the charter  
138 school.

139 (d) The governing body of a charter school may offer employee benefit plans for its  
140 employees:

141 (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;

142 or

143 (ii) under any other program.

144 (9) (a) A charter school that made an election of nonparticipation as an employer for  
145 retirement programs under Title 49, Chapter 12, Public Employees' Contributory Retirement  
146 Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act, may  
147 subsequently make an irrevocable retraction of the election of nonparticipation.

148 (b) A retraction provided under this Subsection (9):

149 (i) shall be documented by a resolution adopted by the governing body of the charter  
150 school;

151 (ii) is a one-time election;

152 (iii) is irrevocable; and

153 (iv) applies to the charter school as the employer and to all employees of the charter  
154 school.

155 [~~9~~] (10) The governing body of a charter school shall ensure that, prior to the  
156 beginning of each school year, each of its employees signs a document acknowledging that the  
157 employee:

158 (a) has received:

159 (i) the disclosure required under Section 63A-4-204.5 if the charter school participates  
160 in the Risk Management Fund; or

161 (ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if  
162 the charter school does not participate in the Risk Management Fund; and

163 (b) understands the legal liability protection provided to the employee and what is not  
164 covered, as explained in the disclosure.