

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

7
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 charter
12 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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Be it enacted by the Legislature of the state of Utah:

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

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

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

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

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

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

(b) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date.

(3) An employer that is a charter school sponsored by the State Board of Education or a school district that makes an election of nonparticipation in accordance with [~~Section 53A-1a-512 may~~] Subsection 53A-1a-512(8) shall be excluded as a participating employer unless the charter school makes a one-time, irrevocable retraction of the election of nonparticipation in accordance with Subsection 53A-1a-512(9).

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

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

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

49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission

59 **requirements -- Nondiscrimination requirements.**

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

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

65 (2) An employer not initially admitted or included as a participating employer in this
66 system prior to January 1, 1982, may be excluded from participation in this system if:

67 (a) the employer elects not to provide or participate in any type of private or public
68 retirement, supplemental or defined contribution plan, either directly or indirectly, for its
69 employees, except for Social Security; or

70 (b) the employer offers another collectively bargained retirement benefit and has
71 continued to do so on an uninterrupted basis since that date.

72 (3) An employer that is a charter school sponsored by the State Board of Education or a
73 school district that makes an election of nonparticipation in accordance with [~~Section~~
74 ~~53A-1a-512 shall~~] Subsection 53A-1a-512(8) shall be excluded as a participating employer
75 unless the charter school makes a one-time, irrevocable retraction of the election of
76 nonparticipation in accordance with Subsection 53A-1a-512(9).

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

81 (5) (a) Any employer may by resolution of its governing body apply for admission to
82 this system.

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

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

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

91 **53A-1a-512. Employees of charter schools.**

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

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

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

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

99 (b) Chapter 10, Educator Evaluation; and

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

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

103 (i) are licensed; or

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

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

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

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

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

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

118 (8) (a) At the time of application for a charter school, whether the chartering entity is
119 the State Charter School Board or a school district, a proposed charter school may make an
120 election of nonparticipation as an employer for retirement programs under Title 49, Chapter 12,

121 Public Employees' Contributory Retirement Act and under Title 49, Chapter 13, Public
122 Employees' Noncontributory Retirement Act.

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

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

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

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

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

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

133 (iv) applies to the charter school as the employer and to all employees of the charter
134 school.

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

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

139 (ii) under any other program.

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

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

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

147 (ii) is a one-time election;

148 (iii) is irrevocable; and

149 (iv) applies to the charter school as the employer and to all employees of the charter
150 school.

151 ~~[(9)]~~ (10) The governing body of a charter school shall ensure that, prior to the

152 beginning of each school year, each of its employees signs a document acknowledging that the
153 employee:

154 (a) has received:

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

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

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

Legislative Review Note
as of 12-18-08 9:38 AM

Office of Legislative Research and General Counsel

H.B. 96 - State Retirement System Participation for Charter Schools

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses or local governments. Individuals may benefit in this change in statute.
