

Senator David P. Hinkins proposes the following substitute bill:

STATE RETIREMENT SYSTEM
PARTICIPATION FOR CHARTER SCHOOLS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

28

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 employer
 40 in this system prior to January 1, 1982~~[, may be excluded from participation in this system]~~ if:

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

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

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

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

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

57 rendered.

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

59 **49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission**
60 **requirements -- Nondiscrimination requirements.**

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

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

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

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

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

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

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

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

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

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

87 (6) If a participating employer purchases service credit on behalf of regular full-time

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

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

93 **53A-1a-512. Employees of charter schools.**

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

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

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

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

101 (b) Chapter 10, Educator Evaluation; and

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

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

105 (i) are licensed; or

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

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

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

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

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

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

119 Act.

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

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

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

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

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

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

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

135 (iv) applies to the charter school as the employer and to all employees of the charter
136 school.

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

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

141 (ii) under any other program.

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

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

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

149 (ii) is a one-time election;

150 (iii) is irrevocable; and

151 (iv) applies to the charter school as the employer and to all employees of the charter
152 school.

153 [~~9~~] (10) The governing body of a charter school shall ensure that, prior to the
154 beginning of each school year, each of its employees signs a document acknowledging that the
155 employee:

156 (a) has received:

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

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

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

Fiscal Note

**H.B. 96 1st Sub. (Buff) - State Retirement System Participation for Charter
Schools**

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.
