

1 **SUPPLEMENTAL BENEFIT AMENDMENTS FOR**
2 **NONCONTRIBUTORY PUBLIC EMPLOYEES**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Daniel R. Liljenquist**

6 House Sponsor: Brad L. Dee

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Public Employees' Noncontributory Retirement Act by amending
11 provisions related to the supplemental defined contribution for certain employees.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ removes for employees that began full-time employment with the state or its
15 educational institutions on or after July 1, 1986, the requirement that 1.5% of salary
16 be paid into the 401(k) account of state and educational institution employees in the
17 Public Employees' Noncontributory Retirement System;
- 18 ▶ requires a participating employer to determine whether an employee is eligible to
19 receive the 1.5% of salary nonelective contribution;
- 20 ▶ provides a maximum 12 month look-back period to correct errors in the nonelective
21 contribution; and
- 22 ▶ makes technical changes.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill takes effect on July 1, 2010.

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **49-13-303**, as renumbered and amended by Laws of Utah 2002, Chapter 250

30

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

32 Section 1. Section **49-13-303** is amended to read:

33 **49-13-303. Supplemental benefit provided to certain employees -- Defined**
 34 **contribution plan options -- Contribution by employer and employee -- Immediate**
 35 **vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.**

36 (1) (a) (i) ~~[Participating employers]~~ A participating employer in Level A under Section
 37 49-13-301, ~~[which are participating educational institutions or participating employers whose~~
 38 ~~activities are associated with participating educational institutions,]~~ shall make a nonelective
 39 contribution on behalf of each ~~[of its]~~ regular full-time ~~[employees]~~ employee who ~~[are~~
 40 ~~members]~~:

41 (A) is a member of this system; ~~§→ and ←§~~

42 (B) before July 1, 1986, began the employee's §→ [current] ←§ regular full-time employment
 43 with:

44 (I) the state;

45 (II) an educational institution of the state; or

46 (III) a participating employer whose activities are associated with participating
 47 educational institutions §→ [; and

48 ~~—— (C) has, since before July 1, 1986, continued the employment which began under~~
 49 ~~**Subsection (1)(a)(i)(B) without a break, interruption, transfer, termination, rehire, or change of**~~
 50 ~~**the employing agency]** ←§ .~~

51 (ii) The nonelective contribution shall be an amount equal to at least 1.5% of the
 52 member's compensation to a defined contribution plan [qualified under Section 401(k) of the
 53 Internal Revenue Code which is].

54 (iii) The defined contribution plan shall be:

55 (A) selected by the regular full-time employee [and which is];

56 (B) sponsored by:

57 (I) the board[; by that];

58 (II) the Level A employer[;]; or [by]

59 (III) a group of similar Level A employers~~[, and which has been]; and~~
 60 (C) qualified as grandfathered under Section 1116 of the Federal Tax Reform Act of
 61 1986.

62 (b) ~~[All other]~~ (i) A Level A participating [employers] employer under Section
 63 49-13-301 that is not included under Subsection (1)(a), shall make a nonelective contribution
 64 on behalf of each [of its] regular full-time [employees] employee who [are members];

65 (A) is a member of this system; and

66 (B) before July 1, 1986, began the employee's ~~§~~ → [current] ← ~~§~~ regular full-time employment
 67 with:

68 (I) the state; or

69 (II) an educational institution of the state ~~§~~ → [; and

70 ~~—— (C) has, since before July 1, 1986, continued the employment which began under~~
 71 ~~**Subsection (1)(a)(i)(B) without a break, interruption, transfer, termination, rehire, or change of**~~
 72 ~~**the employing agency]** ← ~~§~~ .~~

73 (ii) The nonelective contribution shall be an amount equal to at least 1.5% of the
 74 member's compensation to the defined contribution plan [qualified under Section 401(k) of the
 75 Internal Revenue Code which is sponsored by the board].

76 (c) ~~The member or participating employer may make additional payments to [either the~~
 77 ~~qualified 401(k) plan which receives the 1.5% employer contribution described in this~~
 78 ~~Subsection (1), or to any other defined contribution plan qualified under Section 401(k) of the~~
 79 ~~Internal Revenue Code which is selected by the member and sponsored by the board, that Level~~
 80 ~~A employer, or a group of similar Level A employers, and which has been grandfathered under~~
 81 ~~Section 1116 of the Federal Tax Reform Act of 1986] a qualified defined contribution plan~~
 82 described under this Subsection (1).

83 (d) (i) A participating employer shall determine whether an employee is eligible to
 84 receive the nonelective contribution under Subsections (1)(a) and (b).

85 (ii) The office shall provide information to assist the participating employer in the
 86 determination under Subsection (1)(d)(i).

87 (e) If an error is made in a determination under Subsection (1)(d), the participating
 88 employer shall correct the error by:

89 (i) making up unmade contributions on behalf of the employee for up to 12 months of

90 any unmade contributions; or

91 (ii) requiring the employee to refund up to 12 months of the contributions received in
92 error.

93 (2) (a) Participating employers in Level B under Section 49-13-301 may make
94 nonelective contributions on behalf of each of its regular full-time employees who are members
95 of this system to the 401(k) defined contribution plan sponsored by the board or to a qualified
96 plan sponsored by the participating employer which has been grandfathered under Section
97 1116 of the Federal Tax Reform Act of 1986.

98 (b) The member may also make voluntary deferrals to the same 401(k) plan which the
99 member selected to receive the employer contribution described in Subsection (2)(a).

100 (3) Each qualified defined contribution 401(k) plan is separate and distinct from any
101 other qualified defined contribution 401(k) plan for all purposes, including purposes of
102 fiduciary liability and plan administration.

103 (4) A member may not make voluntary deferrals to any other qualified 401(k) plan
104 sponsored by a state or local government.

105 (5) ~~[The]~~ Except as provided under Subsection (1)(e), the total amount contributed by
106 the participating employer and the member under Subsection (1) or (2) vests to the member's
107 benefit immediately and is nonforfeitable.

108 (6) The board may request from any other qualified 401(k) plan under Subsection (1)
109 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
110 Internal Revenue Code.

111 (7) The board may take any action which in its judgment is necessary to maintain the
112 tax-qualified status of its 401(k) defined contribution plan under federal law.

113 **Section 2. Effective date.**

114 This bill takes effect on July 1, 2010.

Legislative Review Note
as of 1-14-10 2:48 PM

Office of Legislative Research and General Counsel

Fiscal Note**S.B. 94 - Supplemental Benefit Amendments for Noncontributory Public Employees**

2010 General Session

State of Utah

State Impact

Enactment of this bill would yield on-going savings of approximately \$23,881,800 from various funds as shown in the table below. Of that savings, \$19,182,800 is in the General and Education Funds.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	(\$3,545,400)	(\$3,545,400)	\$0	\$0	\$0
General Fund Restricted	\$0	(\$649,200)	(\$649,200)	\$0	\$0	\$0
Education Fund	\$0	(\$15,637,200)	(\$15,637,200)	\$0	\$0	\$0
Transportation Fund	\$0	(\$859,100)	(\$859,100)	\$0	\$0	\$0
Transportation Fund Restricted	\$0	(\$157,800)	(\$157,800)	\$0	\$0	\$0
Federal Funds	\$0	(\$2,084,000)	(\$2,084,000)	\$0	\$0	\$0
Federal Mineral Lease	\$0	(\$26,000)	(\$26,000)	\$0	\$0	\$0
Dedicated Credits	\$0	(\$554,800)	(\$554,800)	\$0	\$0	\$0
Trust Funds	\$0	(\$253,900)	(\$253,900)	\$0	\$0	\$0
Transfers	\$0	(\$114,400)	(\$114,400)	\$0	\$0	\$0
Total	\$0	(\$23,881,800)	(\$23,881,800)	\$0	\$0	\$0

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. Some individuals may be impacted due to this change the proposed statute.