

1                                 **RETIREMENT PARTICIPATION AMENDMENTS**

2   2010 GENERAL SESSION

3   STATE OF UTAH

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

5   House Sponsor: Don L. Ipson

---

---

7 **LONG TITLE**

8 **General Description:**

9             This bill modifies the Utah State Retirement and Insurance Benefit Act to allow certain  
10 employers and employees to be excluded from participation in the Public Employees'  
11 Non-Contributory Retirement System.

12 **Highlighted Provisions:**

- 13             This bill:
- 14                 ▶ allows senior staff of USTAR to elect to opt out of a defined benefit retirement
  - 15 system and into a defined contribution retirement system;
  - 16                 ▶ specifies that certain interlocal risk management organizations may elect to not
  - 17 participate in the Public Employees' Non-Contributory Retirement System;
  - 18                 ▶ provides procedures for the exclusion;
  - 19                 ▶ requires the retirement office to reduce an employer's delinquent contributions to
  - 20 the system on behalf of an employee who has relinquished service credit; and
  - 21                 ▶ makes technical amendments.

22 **Monies Appropriated in this Bill:**

23             None

24 **Other Special Clauses:**

25             None

26 **Utah Code Sections Affected:**

27 **AMENDS:**

28             **49-11-406**, as enacted by Laws of Utah 2008, Chapter 335

29             **49-11-601**, as last amended by Laws of Utah 2003, Chapter 240

30 49-13-202, as last amended by Laws of Utah 2009, Chapters 51 and 165

31 49-13-203, as last amended by Laws of Utah 2009, Chapter 51

32 

---

---

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

34 Section 1. Section 49-11-406 is amended to read:

35 **49-11-406. Governor's appointed executives and senior staff -- Appointed**  
36 **legislative employees -- Transfer of value of accrued defined benefit -- Procedures.**

37 (1) As used in this section:

38 (a) "Defined benefit balance" means the total amount of the contributions made on  
39 behalf of a member to a defined benefit system plus refund interest.

40 (b) "Senior staff" means an at-will employee who reports directly to an elected official,  
41 executive director, or director and includes a deputy director and other similar, at-will  
42 employee positions designated by the governor, the speaker of the House, or the president of  
43 the Senate and filed with the Department of Human Resource Management and the Utah State  
44 Retirement Office.

45 (2) In accordance with this section and subject to federal law, a member who has  
46 service credit from a system may elect to be exempt from coverage under a defined benefit  
47 system and to have the member's defined benefit balance transferred from the defined benefit  
48 system or plan to a defined contribution plan in the member's own name if the member is:

49 (a) the state auditor;

50 (b) the state treasurer;

51 (c) an appointed executive under Subsection 67-22-2(1)(a);

52 (d) an employee in the Governor's Office;

53 (e) senior staff in the Governor's Office of Planning and Budget;

54 (f) senior staff in the Governor's Office of Economic Development;

55 (g) senior staff in the Commission on Criminal and Juvenile Justice;

56 (h) a legislative employee appointed under Subsection 36-12-7(3)(a); [or]

57 (i) a legislative employee appointed by the speaker of the House of Representatives,

58 the House of Representatives minority leader, the president of the Senate, or the Senate  
59 minority leader[-]; or

60 (j) senior staff of the Utah Science Technology and Research Initiative created under  
61 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

62 (3) An election made under Subsection (2):

63 (a) is final, and no right exists to make any further election;

64 (b) is considered a request to be exempt from coverage under a defined benefits  
65 system; and

66 (c) shall be made on forms provided by the office.

67 (4) The board shall adopt rules to implement and administer this section.

68 Section 2. Section **49-11-601** is amended to read:

69 **49-11-601. Payment of employer contributions -- Penalties for failure to comply**  
70 **-- Adjustments to be made.**

71 (1) The employer contributions, fees, premium taxes, contribution adjustments, and  
72 other required payments shall be paid to the office by the participating employer as determined  
73 by the executive director.

74 (2) A participating employer that fails to withhold the amount of any member  
75 contributions, as soon as administratively possible, shall also pay the member contributions to  
76 the office out of its own funds.

77 (3) [H] Except as limited by Subsections (6) and (7), if a participating employer does  
78 not make the contributions required by this title within 60 days of the end of the pay period,  
79 the participating employer is liable to the office as provided in Section 49-11-604 for:

80 (a) delinquent contributions;

81 (b) interest on the delinquent contributions as calculated under Section 49-11-503;

82 and

83 (c) a 12% per annum penalty on delinquent contributions.

84 (4) The executive director may waive all or any part of the interest, penalties,  
85 expenses, and fees if the executive director finds there were extenuating circumstances

86 surrounding the participating employer's failure to comply with this section.

87 (5) Contributions made in error will be refunded to the participating employer or  
88 member that made the contributions.

89 (6) (a) An employer described in Subsections 49-13-202(2)(c) or (d) that paid  
90 retirement benefits to an employee or retiree that were not required by this title, may offer the  
91 retirement benefits paid to the employee as a substantial substitute to service credit and  
92 retirement benefits that may have been earned by the employee under this title.

93 (b) An employee who received retirement benefits under Subsection (6)(a) may sign  
94 an affidavit that:

95 (i) acknowledges the substantial substitute received by the employee under Subsection  
96 (6)(a); and

97 (ii) irrevocably relinquishes service credit and retirement benefits that may have  
98 accrued to the employee under this title effective from the employee's date of employment with  
99 the employer described in Subsection (6)(a) to the date of the employer's election under  
100 Section 49-13-202.

101 (c) Nothing in this section shall be construed to diminish an employer's right to  
102 recover past retirement benefits other than Social Security, paid to an employee or retiree, in  
103 error or under mistaken belief that the employer was not a participating employer.

104 (7) If the employer files with the office an irrevocable written relinquishment of  
105 service credit signed by the member or retiree:

106 (a) the office shall proportionally reduce any delinquent contributions, penalties, fees,  
107 or interest assessed against a participating employer in connection with a member or retiree  
108 described in Subsection (6)(a); and

109 (b) the system has no liability to the employee for benefits relinquished under  
110 Subsection (6)(b).

111 Section 3. Section **49-13-202** is amended to read:

112 **49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission**  
113 **requirements -- Nondiscrimination requirements -- Service credit purchases.**

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

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

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

120 (a) an employer not initially admitted or included as a participating employer in this  
121 system ~~[prior to]~~ before January 1, 1982 if:

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

125 (ii) the employer offers another collectively bargained retirement benefit and has  
126 continued to do so on an uninterrupted basis since that date;

127 (b) an employer that is a charter school sponsored by the State Board of Education or a  
128 school district that makes an election of nonparticipation in accordance with Section  
129 53A-1a-512 unless the charter school makes a one-time, irrevocable retraction of the election  
130 of nonparticipation in accordance with Subsection 53A-1a-512(9); ~~[or]~~

131 (c) an employer that is a hospital created as a special service district under Title 17D,  
132 Chapter 1, Special Service District Act, that makes an election of nonparticipation in  
133 accordance with Subsection (5)~~[-];~~ or

134 (d) an employer that is a risk management association initially created by interlocal  
135 agreement before 1986 for the purpose of implementing a self-insurance joint protection  
136 program for the benefit of member municipalities of the association.

137 (3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time  
138 to provide or participate in any type of public or private retirement, supplemental or defined  
139 contribution plan, either directly or indirectly, except for Social Security, the employer shall be  
140 a participating employer in this system.

141 (4) (a) An employer may, by resolution of its governing body, apply for admission to

142 this system.

143 (b) Upon approval of the resolution by the board, the employer is a participating  
144 employer in this system and is subject to this title.

145 (5) (a) (i) Until June 30, 2009, a employer that is a hospital created as a special service  
146 district under Title 17D, Chapter 1, Special Service District Act, may make an election of  
147 nonparticipation as an employer for retirement programs under this chapter.

148 (ii) On or before July 1, 2010, an employer described in Subsection (2)(d) may make  
149 an election of nonparticipation as an employer for retirement programs under this chapter.

150 (b) An election provided under Subsection (5)(a):

151 (i) is a one-time election made no later than the time specified under Subsection  
152 (5)(a);

153 (ii) shall be documented by a resolution adopted by the governing body of the [~~special~~  
154 ~~service district~~] employer;

155 (iii) is irrevocable; and

156 (iv) applies to the [~~special service district as the~~] employer described in Subsection  
157 (5)(a) and to all employees of [the special service district] that employer.

158 (c) [~~The governing body of the special service district~~] The employer making an  
159 election under Subsection (5)(a) may offer employee benefit plans for its employees:

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

162 (ii) under any other program.

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

168 Section 4. Section **49-13-203** is amended to read:

169 **49-13-203. Exclusions from membership in system.**

- 170 (1) The following employees are not eligible for service credit in this system:
- 171 (a) An employee whose employment status is temporary in nature due to the nature or  
172 the type of work to be performed, provided that:
- 173 (i) if the term of employment exceeds six months and the employee otherwise qualifies  
174 for service credit in this system, the participating employer shall report and certify to the office  
175 that the employee is a regular full-time employee effective the beginning of the seventh month  
176 of employment; and
- 177 (ii) if an employee, previously terminated prior to becoming eligible for service credit  
178 in this system, is reemployed within three months of termination by the same participating  
179 employer, the participating employer shall report and certify to the office that the member is a  
180 regular full-time employee when the total of the periods of employment equals six months and  
181 the employee otherwise qualifies for service credit in this system.
- 182 (b) (i) A current or future employee of a two-year or four-year college or university  
183 who holds, or is entitled to hold, under Section 49-13-204, a retirement annuity contract with  
184 the Teachers' Insurance and Annuity Association of America or with any other public or  
185 private system, organization, or company during any period in which required contributions  
186 based on compensation have been paid on behalf of the employee by the employer.
- 187 (ii) The employee, upon cessation of the participating employer contributions, shall  
188 immediately become eligible for service credit in this system.
- 189 (c) An employee serving as an exchange employee from outside the state.
- 190 (d) An executive department head of the state or a legislative director, senior executive  
191 employed by the governor's office, a member of the State Tax Commission, a member of the  
192 Public Service Commission, and a member of a full-time or part-time board or commission  
193 who files a formal request for exemption.
- 194 (e) An employee of the Department of Workforce Services who is covered under  
195 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.
- 196 (f) (i) An employee who is employed [~~on or after July 1, 2009~~] with an employer that  
197 has elected[~~, prior to July 1, 2009,~~] to be excluded from participation in this system under

198 Subsection 49-13-202~~[(2)(c)]~~(5), effective on or after the date of the employer's election under  
199 Subsection 49-13-202(5).

200 (ii) Notwithstanding the provisions of this Subsection (1)(f), any eligibility for service  
201 credit earned by an employee under this chapter before ~~[July 1, 2009]~~ the date of the election  
202 under Subsection 49-13-202(5) is not affected under this Subsection (1)(f).

203 (2) Upon filing a written request for exemption with the office, the following  
204 employees shall be exempt from coverage under this system:

205 (a) a full-time student or the spouse of a full-time student and individuals employed in  
206 a trainee relationship;

207 (b) an elected official;

208 (c) an executive department head of the state, a member of the State Tax Commission,  
209 a member of the Public Service Commission, and a member of a full-time or part-time board  
210 or commission;

211 (d) an employee of the Governor's Office of Planning and Budget;

212 (e) an employee of the Governor's Office of Economic Development;

213 (f) an employee of the Commission on Criminal and Juvenile Justice;

214 (g) an employee of the Governor's Office;

215 (h) an employee of the State Auditor's Office;

216 (i) an employee of the State Treasurer's Office;

217 (j) any other member who is permitted to make an election under Section 49-11-406;

218 (k) a person appointed as a city manager or chief city administrator or another person  
219 employed by a municipality, county, or other political subdivision, who is an at-will employee;  
220 ~~[and]~~

221 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,  
222 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided  
223 through membership in a labor organization that provides retirement benefits to its  
224 members~~[-];~~ and

225 (m) an employee of the Utah Science Technology and Research Initiative created



226 under Title 63M, Chapter 2, Utah Technology Research and Governing Authority Act.

227 (3) (a) Each participating employer shall prepare a list designating those positions  
228 eligible for exemption under Subsection (2).

229 (b) An employee may not be exempted unless the employee is employed in a position  
230 designated by the participating employer.

231 (4) (a) In accordance with this section, a municipality, county, or political subdivision  
232 may not exempt more than 50 positions or a number equal to 10% of the employees of the  
233 municipality, county, or political subdivision, whichever is lesser.

234 (b) A municipality, county, or political subdivision may exempt at least one regular  
235 full-time employee.

236 (5) Each participating employer shall:

237 (a) file employee exemptions annually with the office; and

238 (b) update the employee exemptions in the event of any change.

239 (6) The office may make rules to implement this section.