

RETIREMENT PARTICIPATION AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel R. Liljenquist

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ specifies the employers who may elect to not participate in the Public Employees' Non-Contributory Retirement System;
- ▶ provides procedures for the exclusion;
- ▶ requires the retirement office to reduce an employer's delinquent contributions to the system on behalf of an employee who has relinquished service credit; and
- ▶ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



28 49-13-203, as last amended by Laws of Utah 2009, Chapter 51



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

31 Section 1. Section 49-11-601 is amended to read:

32 **49-11-601. Payment of employer contributions -- Penalties for failure to comply --**
33 **Adjustments to be made.**

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

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

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

- 43 (a) delinquent contributions;
- 44 (b) interest on the delinquent contributions as calculated under Section 49-11-503; and
- 45 (c) a 12% per annum penalty on delinquent contributions.

46 (4) The executive director may waive all or any part of the interest, penalties, expenses,
47 and fees if the executive director finds there were extenuating circumstances surrounding the
48 participating employer's failure to comply with this section.

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

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

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

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

59 (ii) irrevocably relinquishes service credit and retirement benefits that may have
60 accrued to the employee under this title effective from the employee's date of employment with
61 the employer described in Subsection (6)(a) to the date of the employer's election under Section
62 49-13-202.

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

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

68 (b) the system has no liability to the employee for benefits that would otherwise be
69 payable under this title.

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

71 **49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission**
72 **requirements -- Nondiscrimination requirements -- Service credit purchases.**

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

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

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

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

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

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

86 (b) an employer that is a charter school sponsored by the State Board of Education or a
87 school district that makes an election of nonparticipation in accordance with Section
88 53A-1a-512 unless the charter school makes a one-time, irrevocable retraction of the election
89 of nonparticipation in accordance with Subsection 53A-1a-512(9); [~~or~~]

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

93 (d) an employer that is an authority created under Title 63M, Chapter 2, Utah Science
94 Technology and Research Governing Authority Act; or

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

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

102 (4) (a) An employer may, by resolution of its governing body, apply for admission to
103 this system.

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

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

109 (ii) On or before July 1, 2010, an employer described in Subsections (2)(d) or (e) may
110 make an election of nonparticipation as an employer for retirement programs under this
111 chapter.

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

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

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

116 (iii) is irrevocable; and

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

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

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

122 or

123 (ii) under any other program.

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

129 Section 3. Section **49-13-203** is amended to read:

130 **49-13-203. Exclusions from membership in system.**

131 (1) The following employees are not eligible for service credit in this system:

132 (a) An employee whose employment status is temporary in nature due to the nature or
133 the type of work to be performed, provided that:

134 (i) if the term of employment exceeds six months and the employee otherwise qualifies
135 for service credit in this system, the participating employer shall report and certify to the office
136 that the employee is a regular full-time employee effective the beginning of the seventh month
137 of employment; and

138 (ii) if an employee, previously terminated prior to becoming eligible for service credit
139 in this system, is reemployed within three months of termination by the same participating
140 employer, the participating employer shall report and certify to the office that the member is a
141 regular full-time employee when the total of the periods of employment equals six months and
142 the employee otherwise qualifies for service credit in this system.

143 (b) (i) A current or future employee of a two-year or four-year college or university
144 who holds, or is entitled to hold, under Section 49-13-204, a retirement annuity contract with
145 the Teachers' Insurance and Annuity Association of America or with any other public or private
146 system, organization, or company during any period in which required contributions based on
147 compensation have been paid on behalf of the employee by the employer.

148 (ii) The employee, upon cessation of the participating employer contributions, shall
149 immediately become eligible for service credit in this system.

150 (c) An employee serving as an exchange employee from outside the state.

151 (d) An executive department head of the state or a legislative director, senior executive

152 employed by the governor's office, a member of the State Tax Commission, a member of the
153 Public Service Commission, and a member of a full-time or part-time board or commission
154 who files a formal request for exemption.

155 (e) An employee of the Department of Workforce Services who is covered under
156 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

157 (f) (i) An employee who is employed [~~on or after July 1, 2009~~] with an employer that
158 has elected[~~, prior to July 1, 2009;~~] to be excluded from participation in this system under
159 Subsection 49-13-202[(2)(c)](5), effective on or after the date of the employer's election under
160 Subsection 49-13-202(5).

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

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

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

168 (b) an elected official;

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

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

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

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

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

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

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

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

179 (k) a person appointed as a city manager or chief city administrator or another person
180 employed by a municipality, county, or other political subdivision, who is an at-will employee;
181 and

182 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,

183 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
184 membership in a labor organization that provides retirement benefits to its members.

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

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

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

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

194 (5) Each participating employer shall:

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

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

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

Legislative Review Note
as of 2-19-10 11:24 AM

Office of Legislative Research and General Counsel

S.B. 240 - Retirement Participation Amendments

Fiscal Note

2010 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 individuals, businesses, or local governments.
