

**Senator Todd Weiler** proposes the following substitute bill:

**RETIREMENT WITHDRAWAL MODIFICATIONS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Kraig Powell

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by providing for the withdrawal of employees of a withdrawing entity.

**Highlighted Provisions:**

This bill:

- ▶ allows certain withdrawing entities to make an election to withdraw from participation in a Utah retirement system or plan for current and future employees in certain circumstances;
- ▶ requires the withdrawing entity to pay certain costs that arise out of the election of the withdrawal;
- ▶ excludes all employees of a withdrawing entity from participation in the Public Employees' Contributory Retirement System, the Public Employees' Noncontributory Retirement System, and the New Public Employees' Tier II Contributory Retirement Act under certain circumstances;

→ [→ ~~requires certain reporting from a withdrawing entity;~~ ←] ← and

- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**1st Sub. S.B. 239**



26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **49-11-623**, as enacted by Laws of Utah 2014, Chapter 365

31 **49-12-203**, as last amended by Laws of Utah 2014, Chapters 15, 201, and 365

32 **49-13-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365

33 **49-22-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365



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

36 Section 1. Section **49-11-623** is amended to read:

37 **49-11-623. Withdrawing entity -- Participation election date -- Withdrawal costs**  
38 **-- Rulemaking.**

39 (1) As used in this section, "withdrawing entity" means an entity that:

40 (a) participates in a system or plan under this title prior to July 1, 2014;

41 (b) provides mental health and substance abuse services for a county under Section  
42 **17-50-318**;

43 (c) after beginning participation with a system or plan under this title, has modified its  
44 federal tax status to a nonprofit organization that qualifies under Section 501(c)(3) of the  
45 Internal Revenue Code; and

46 (d) is not a state institution of higher education as described in Section **53B-2-101**.

47 (2) Notwithstanding any other provision of this title, a withdrawing entity may provide  
48 for the participation of its employees with that system or plan as follows:

49 (a) the withdrawing entity shall determine a date that is no later than January 1, 2017,  
50 on which the withdrawing entity shall make an election under Subsection (3); and

51 (b) subject to the provisions of Subsection (6), the withdrawing entity shall pay to the  
52 office any reasonable actuarial and administrative costs determined by the office to have arisen  
53 out of an election made under this section.

54 (3) The withdrawing entity described under Subsection (2) may elect to:

55 (a) (i) continue its participation for all current employees of the withdrawing entity,  
56 who are covered by a system or plan as of the date set under Subsection (2)(a); and

57            ~~[(b)]~~ (ii) withdraw from participation in all systems or plans for all persons initially  
 58 entering employment with the withdrawing entity, beginning on the date set under Subsection  
 59 (2)(a)~~[-]; or~~

60            (b) withdraw from participation in all systems or plans for all current and future  
 61 employees of the withdrawing entity, beginning on the date set under Subsection (2)(a).

62            (4) (a) An election provided under Subsection (3):

63            (i) is a one-time election made no later than the date specified under Subsection (2)(a);

64            (ii) shall be documented by a resolution adopted by the governing body of the  
 65 withdrawing entity;

66            (iii) is irrevocable; and

67            (iv) applies to the withdrawing entity as the employer and to all employees of the  
 68 withdrawing entity.

69            (b) Notwithstanding an election made under Subsection (3), any eligibility for service  
 70 credit earned by an employee under this title before the date specified under Subsection (2)(a)  
 71 is not affected by this section.

72            (5) If a withdrawing entity elects to continue participation under Subsection (3), the  
 73 withdrawing entity shall continue to be subject to the laws and the rules governing the system  
 74 or plan in which an employee participates, including the accrual of service credit and payment  
 75 of contributions.

76            (6) Before a withdrawing entity may withdraw under this section, the withdrawing  
 77 entity and the office shall enter into an agreement on:

78            (a) the costs described under Subsection (2)(b); and

79            (b) arrangements for the payment of the costs described under Subsection (2)(b).

80            ~~§→ [(7) (a) A withdrawing entity that withdraws under Subsection (3)(a) or (b), shall~~  
 81 ~~prepare and submit to the governor and the Retirement and Independent Entities Committee, by~~  
 82 ~~October 1 of each year, an annual written report of its finances, operations, and services for the~~  
 83 ~~preceding fiscal year.~~

84            ~~—— (b) The report shall include:~~

85            ~~—— (i) budget data showing personnel and employee benefit expenditures, financial status,~~  
 86 ~~and any outstanding loan information; and~~

87            ~~—— (ii) historical data from previous years for comparison with data reported under ☺~~

88 ~~☉ Subsections (7)(a) and (b)(i):~~ ←Ŝ

89 [~~(6)~~] Ŝ→ [~~(8)~~] (7) ←Ŝ The board shall make rules to implement this section.

90 Section 2. Section 49-12-203 is amended to read:

91 **49-12-203. Exclusions from membership in system.**

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

93 (a) subject to the requirements of Subsection (2), an employee whose employment  
94 status is temporary in nature due to the nature or the type of work to be performed;

95 (b) except as provided under Subsection (3)(a), an employee of an institution of higher  
96 education who participates in a retirement system with a public or private retirement system,  
97 organization, or company designated by the State Board of Regents during any period in which  
98 required contributions based on compensation have been paid on behalf of the employee by the  
99 employer;

100 (c) an employee serving as an exchange employee from outside the state;

101 (d) an executive department head of the state, a member of the State Tax Commission,  
102 the Public Service Commission, and a member of a full-time or part-time board or commission  
103 who files a formal request for exemption;

104 (e) an employee of the Department of Workforce Services who is covered under  
105 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

106 (f) an employee who is employed on or after July 1, 2009, with an employer that has  
107 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection  
108 [49-12-202\(2\)\(c\)](#);

109 (g) an employee who is employed on or after July 1, 2014, with an employer that has  
110 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection  
111 [49-12-202\(2\)\(d\)](#); or

112 (h) an employee who is employed with a withdrawing entity that has elected, prior to  
113 January 1, 2017, to exclude;

114 (i) new employees from participation in this system under Subsection  
115 [49-11-623\(3\)\(a\)](#); or

116 (ii) all employees from participation in this system under Subsection [49-11-623\(3\)\(b\)](#).

117 (2) If an employee whose status is temporary in nature due to the nature of type of  
118 work to be performed:

119 (a) is employed for a term that exceeds six months and the employee otherwise  
120 qualifies for service credit in this system, the participating employer shall report and certify to  
121 the office that the employee is a regular full-time employee effective the beginning of the  
122 seventh month of employment; or

123 (b) was previously terminated prior to being eligible for service credit in this system  
124 and is reemployed within three months of termination by the same participating employer, the  
125 participating employer shall report and certify that the member is a regular full-time employee  
126 when the total of the periods of employment equals six months and the employee otherwise  
127 qualifies for service credits in this system.

128 (3) (a) Upon cessation of the participating employer contributions, an employee under  
129 Subsection (1)(b) is eligible for service credit in this system.

130 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service  
131 credit earned by an employee under this chapter before July 1, 2009 is not affected under  
132 Subsection (1)(f).

133 (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service  
134 credit earned by an employee under this chapter before July 1, 2014, is not affected under  
135 Subsection (1)(g).

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

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

140 (b) an elected official;

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

144 (d) an employee of the Governor's Office of Management and Budget;

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

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

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

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

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

150 (j) any other member who is permitted to make an election under Section 49-11-406;  
151 (k) a person appointed as a city manager or chief city administrator or another person  
152 employed by a municipality, county, or other political subdivision, who is an at-will employee;  
153 and

154 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,  
155 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through  
156 membership in a labor organization that provides retirement benefits to its members.

157 (5) (a) Each participating employer shall prepare a list designating those positions  
158 eligible for exemption under Subsection (4).

159 (b) An employee may not be exempted unless the employee is employed in an  
160 exempted position designated by the participating employer.

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

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

166 (7) Each participating employer shall:

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

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

169 (8) The office may make rules to implement this section.

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

171 **49-13-203. Exclusions from membership in system.**

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

173 (a) subject to the requirements of Subsection (2), an employee whose employment  
174 status is temporary in nature due to the nature or the type of work to be performed;

175 (b) except as provided under Subsection (3)(a), an employee of an institution of higher  
176 education who participates in a retirement system with a public or private retirement system,  
177 organization, or company designated by the State Board of Regents during any period in which  
178 required contributions based on compensation have been paid on behalf of the employee by the  
179 employer;

180 (c) an employee serving as an exchange employee from outside the state;

181 (d) an executive department head of the state or a legislative director, senior executive  
182 employed by the governor's office, a member of the State Tax Commission, a member of the  
183 Public Service Commission, and a member of a full-time or part-time board or commission  
184 who files a formal request for exemption;

185 (e) an employee of the Department of Workforce Services who is covered under  
186 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

187 (f) an employee who is employed with an employer that has elected to be excluded  
188 from participation in this system under Subsection 49-13-202(5), effective on or after the date  
189 of the employer's election under Subsection 49-13-202(5); or

190 (g) an employee who is employed with a withdrawing entity that has elected, prior to  
191 January 1, 2017, to exclude;

192 (i) new employees from participation in this system under Subsection

193 49-11-623(3)[-](a); or

194 (ii) all employees from participation in this system under Subsection 49-11-623(3)(b).

195 (2) If an employee whose status is temporary in nature due to the nature of type of  
196 work to be performed:

197 (a) is employed for a term that exceeds six months and the employee otherwise  
198 qualifies for service credit in this system, the participating employer shall report and certify to  
199 the office that the employee is a regular full-time employee effective the beginning of the  
200 seventh month of employment; or

201 (b) was previously terminated prior to being eligible for service credit in this system  
202 and is reemployed within three months of termination by the same participating employer, the  
203 participating employer shall report and certify that the member is a regular full-time employee  
204 when the total of the periods of employment equals six months and the employee otherwise  
205 qualifies for service credits in this system.

206 (3) (a) Upon cessation of the participating employer contributions, an employee under  
207 Subsection (1)(b) is eligible for service credit in this system.

208 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service  
209 credit earned by an employee under this chapter before the date of the election under  
210 Subsection 49-13-202(5) is not affected under Subsection (1)(f).

211 (4) Upon filing a written request for exemption with the office, the following

212 employees shall be exempt from coverage under this system:

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

215 (b) an elected official;

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

219 (d) an employee of the Governor's Office of Management and Budget;

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

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

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

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

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

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

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

228 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,  
229 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through  
230 membership in a labor organization that provides retirement benefits to its members; and

231 (m) an employee of the Utah Science Technology and Research Initiative created under  
232 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

233 (5) (a) Each participating employer shall prepare a list designating those positions  
234 eligible for exemption under Subsection (4).

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

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

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

242 (7) Each participating employer shall:



- 243 (a) file employee exemptions annually with the office; and
- 244 (b) update the employee exemptions in the event of any change.
- 245 (8) The office may make rules to implement this section.

246 Section 4. Section **49-22-203** is amended to read:

247 **49-22-203. Exclusions from membership in system.**

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

249 (a) subject to the requirements of Subsection (2), an employee whose employment  
250 status is temporary in nature due to the nature or the type of work to be performed;

251 (b) except as provided under Subsection (3), an employee of an institution of higher  
252 education who participates in a retirement system with a public or private retirement system,  
253 organization, or company designated by the State Board of Regents during any period in which  
254 required contributions based on compensation have been paid on behalf of the employee by the  
255 employer;

256 (c) an employee serving as an exchange employee from outside the state;

257 (d) an employee of the Department of Workforce Services who is covered under  
258 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act; or

259 (e) an employee who is employed with a withdrawing entity that has elected, prior to  
260 January 1, 2017, to exclude:

261 (i) new employees from participation in this system under Subsection

262 [49-11-623\(3\)](#)[-](a); or

263 (ii) all employees from participation in this system under Subsection [49-11-623\(3\)](#)(b).

264 (2) If an employee whose status is temporary in nature due to the nature of type of  
265 work to be performed:

266 (a) is employed for a term that exceeds six months and the employee otherwise  
267 qualifies for service credit in this system, the participating employer shall report and certify to  
268 the office that the employee is a regular full-time employee effective the beginning of the  
269 seventh month of employment; or

270 (b) was previously terminated prior to being eligible for service credit in this system  
271 and is reemployed within three months of termination by the same participating employer, the  
272 participating employer shall report and certify that the member is a regular full-time employee  
273 when the total of the periods of employment equals six months and the employee otherwise

274 qualifies for service credits in this system.

275 (3) Upon cessation of the participating employer contributions, an employee under  
276 Subsection (1)(b) is eligible for service credit in this system.

277 Section 5. **Effective date.**

278 If approved by two-thirds of all the members elected to each house, this bill takes effect  
279 upon approval by the governor, or the day following the constitutional time limit of Utah  
280 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
281 the date of veto override.