

**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; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

This bill appropriates in fiscal year 2016:

- ▶ to the Department of Administrative Services - Division of Finance - Mandated - as a one-time appropriation:
  - from the General Fund, One-time, \$3,000,000.



28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **49-11-623**, as enacted by Laws of Utah 2014, Chapter 365

33 **49-12-203**, as last amended by Laws of Utah 2014, Chapters 15, 201, and 365

34 **49-13-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365

35 **49-22-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365

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

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

39 **49-11-623. Withdrawing entity -- Participation election date -- Withdrawal costs**

40 **-- Rulemaking.**

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

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

43 (b) provides mental health and substance abuse services for a county under Section

44 **17-50-318**;

45 (c) after beginning participation with a system or plan under this title, has modified its

46 federal tax status to a nonprofit organization that qualifies under Section 501(c)(3) of the

47 Internal Revenue Code; and

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

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

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

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

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

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

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

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

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

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

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

68           (iii) is irrevocable; and

69           (iv) applies to the withdrawing entity as the employer and to all employees of the  
70 withdrawing entity.

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

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

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

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

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

82           ~~[(6)]~~ (7) The board shall make rules to implement this section.

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

84           **49-12-203. Exclusions from membership in system.**

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

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

88           (b) except as provided under Subsection (3)(a), an employee of an institution of higher  
89 education who participates in a retirement system with a public or private retirement system,

90 organization, or company designated by the State Board of Regents during any period in which  
91 required contributions based on compensation have been paid on behalf of the employee by the  
92 employer;

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

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

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

99 (f) an employee who is employed on or after July 1, 2009, with an employer that has  
100 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection  
101 [49-12-202\(2\)\(c\)](#);

102 (g) an employee who is employed on or after July 1, 2014, with an employer that has  
103 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection  
104 [49-12-202\(2\)\(d\)](#); or

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

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

108 [49-11-623\(3\)\(a\)](#); or

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

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

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

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

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

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

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

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

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

133 (b) an elected official;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

159 (7) Each participating employer shall:

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

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

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

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

164 **49-13-203. Exclusions from membership in system.**

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

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

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

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

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

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

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

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

185 (i) new employees from participation in this system under Subsection  
186 [49-11-623\(3\)\(a\)](#); or

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

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

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

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

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

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

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

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

208 (b) an elected official;

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

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

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

- 214 (f) an employee of the Commission on Criminal and Juvenile Justice;
- 215 (g) an employee of the Governor's Office;
- 216 (h) an employee of the State Auditor's Office;
- 217 (i) an employee of the State Treasurer's Office;
- 218 (j) any other member who is permitted to make an election under Section 49-11-406;
- 219 (k) a person appointed as a city manager or chief city administrator or another person
- 220 employed by a municipality, county, or other political subdivision, who is an at-will employee;
- 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 through
- 223 membership in a labor organization that provides retirement benefits to its members; and
- 224 (m) an employee of the Utah Science Technology and Research Initiative created under
- 225 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- 226 (5) (a) Each participating employer shall prepare a list designating those positions
- 227 eligible for exemption under Subsection (4).
- 228 (b) An employee may not be exempted unless the employee is employed in a position
- 229 designated by the participating employer.
- 230 (6) (a) In accordance with this section, a municipality, county, or political subdivision
- 231 may not exempt more than 50 positions or a number equal to 10% of the employees of the
- 232 municipality, county, or political subdivision, whichever is lesser.
- 233 (b) A municipality, county, or political subdivision may exempt at least one regular
- 234 full-time employee.
- 235 (7) Each participating employer shall:
- 236 (a) file employee exemptions annually with the office; and
- 237 (b) update the employee exemptions in the event of any change.
- 238 (8) The office may make rules to implement this section.
- 239 Section 4. Section 49-22-203 is amended to read:
- 240 **49-22-203. Exclusions from membership in system.**
- 241 (1) The following employees are not eligible for service credit in this system:
- 242 (a) subject to the requirements of Subsection (2), an employee whose employment
- 243 status is temporary in nature due to the nature or the type of work to be performed;
- 244 (b) except as provided under Subsection (3), an employee of an institution of higher



245 education who participates in a retirement system with a public or private retirement system,  
246 organization, or company designated by the State Board of Regents during any period in which  
247 required contributions based on compensation have been paid on behalf of the employee by the  
248 employer;

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

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

252 (e) an employee who is employed with a withdrawing entity that has elected, prior to  
253 January 1, 2017, to exclude;

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

255 [49-11-623\(3\)\(a\)](#); or

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

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

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

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

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

270 **Section 5. Appropriation.**

271 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for  
272 the fiscal year beginning July 1, 2015, and ending June 30, 2016, the following sums of money  
273 are appropriated from resources not otherwise appropriated, or reduced from amounts  
274 previously appropriated, out of the funds or accounts indicated. These sums of money are in  
275 addition to any amounts previously appropriated for fiscal year 2016.

276 To the Department of Administrative Services – Division of Finance – Mandated  
 277 From the General Fund, One-time \$3,000,000

278 Schedule of Programs:

279 Retirement Withdrawal \$3,000,000

280 Under Section 63J-1-603 the Legislature intends that appropriations provided in this  
 281 section not lapse at the end of fiscal year 2016. The use of any nonlapsing funds is limited to  
 282 paying a portion of actuarial and administrative costs for a withdrawing entity to withdraw  
 283 from participation in a Utah retirement system or plan under Subsection 49-11-623(3)(a) or (b).

284 (1) The Division of Finance may release the appropriation upon receipt of a request  
 285 and certification from the Utah State Retirement Office that the conditions under Subsection  
 286 (2) are met.

287 (2) The Utah State Retirement Office's expenditure of the appropriation is contingent  
 288 on:

289 (a) the withdrawing entity complying with the provisions of Section 49-11-623 to  
 290 withdraw;

291 (b) the withdrawing entity and the Utah State Retirement Office entering into an  
 292 agreement on the cost as required under Subsection 49-11-623(6); and

293 (c) the withdrawing entity paying \$3,000,000 to the Utah State Retirement Office for  
 294 actuarial and administrative costs of the withdrawal under Subsection 49-11-623(2)(b).

295 **Section 6. Effective date.**

296 This bill takes effect on July 1, 2015.

**Legislative Review Note**  
**as of 2-19-15 1:05 PM**

**Office of Legislative Research and General Counsel**