

Representative Rich Cunningham proposes the following substitute bill:

POSTRETIREMENT EMPLOYMENT RURAL EXCEPTION

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rich Cunningham

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending postretirement reemployment provisions.

Highlighted Provisions:

This bill:

- ▶ allows a retiree to be reemployed with a participating employer after a certain period from the retiree's retirement date if the retiree:
 - does not receive certain employer provided retirement benefits for the reemployment;
 - is reemployed by a different agency; and
 - is reemployed by a participating employer that meets certain criteria;
- ▶ requires a participating employer to pay the contribution rate for a reemployed retiree in certain circumstances;
- ▶ provides for a sunset of certain exceptions to postretirement employment restrictions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256

31 ENACTS:

32 **63I-1-249**, Utah Code Annotated 1953



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

35 Section 1. Section **49-11-505** is amended to read:

36 **49-11-505. Reemployment of a retiree -- Restrictions -- Penalties.**

37 (1) (a) For purposes of this section, "retiree":

38 (i) means a person who:

39 (A) retired from a participating employer; and

40 (B) begins reemployment on or after July 1, 2010, with a participating employer;

41 (ii) does not include a person:

42 (A) who was reemployed by a participating employer before July 1, 2010; and

43 (B) whose participating employer that reemployed the person under Subsection

44 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with

45 Section **49-11-621** after July 1, 2010; and

46 (iii) does not include a person who is reemployed as an active senior judge or an active

47 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by

48 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

49 (b) (i) This section does not apply to employment as an elected official if the elected

50 official's position is not full time as certified by the participating employer.

51 (ii) The provisions of this section apply to an elected official whose elected position is

52 full time as certified by the participating employer.

53 (c) (i) This section does not apply to employment as a part-time appointed board

54 member who does not receive any remuneration, stipend, or other benefit for the part-time

55 appointed board member's service.

56 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does

57 not include receipt of per diem and travel expenses up to the amounts established by the
58 Division of Finance in:

59 (A) Section 63A-3-106;

60 (B) Section 63A-3-107; and

61 (C) rules made by the Division of Finance according to Sections 63A-3-106 and
62 63A-3-107.

63 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
64 means a person who:

65 (A) is employed by a participating employer [~~and who~~];

66 (B) performs emergency services for another participating employer that is a different
67 agency [~~in which the person~~];

68 [~~(A)~~] (C) [~~has been~~] is trained in techniques and skills required for the service the
69 person provides to the participating employer;

70 [~~(B)~~] (D) continues to receive regular training required for the service;

71 [~~(C)~~] (E) is on the rolls as a trained affiliated emergency services worker of the
72 participating employer; and

73 [~~(D)~~] (F) provides ongoing service for a participating employer, which service may
74 include service as a volunteer firefighter, reserve law enforcement officer, search and rescue
75 personnel, emergency medical technician, ambulance personnel, park ranger, or public utilities
76 worker.

77 (ii) A person who performs work or service but does not meet the requirements of
78 Subsection (1)(d)(i) is not an affiliated emergency services worker for purposes of this
79 Subsection (1)(d).

80 (iii) The office may not cancel the retirement allowance of a retiree who is employed as
81 an affiliated emergency services worker within one year of the retiree's retirement date if the
82 affiliated emergency services worker does not receive any compensation, except for:

83 (A) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money
84 or cash equivalent payment not tied to productivity and paid periodically for services;

85 (B) a length-of-service award;

86 (C) insurance policy premiums paid by the participating employer in the event of death
87 of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

88 (D) reimbursement of expenses incurred in the performance of duties.

89 (iv) For purposes of Subsections (1)(d)(iii)(A) and (B), the total amount of any
90 discounts, tax credits, vouchers, and payments to a volunteer may not exceed \$500 per month.

91 (v) Beginning January 1, 2016, the board shall adjust the amount under Subsection
92 (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year
93 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as
94 determined by the board.

95 (vi) The office shall cancel the retirement allowance of a retiree for the remainder of
96 the calendar year if employment as an affiliated emergency services worker with a participating
97 employer exceeds the limitation under Subsection (1)(d)(iv).

98 (vii) If a retiree is employed as an affiliated emergency services worker under the
99 provisions of Subsection (1)(d), the termination date of the employment as an affiliated
100 emergency services worker, as confirmed in writing by the participating employer, is
101 considered the retiree's retirement date for the purpose of calculating the separation
102 requirement under Subsection (3)(a).

103 (2) A retiree may not for the same period of reemployment:

104 (a) (i) earn additional service credit; or

105 (ii) receive any retirement related contribution from a participating employer; and

106 (b) receive a retirement allowance.

107 (3) (a) Except as provided under Subsection (1)(d), (3)(b), (3)(e), or (10), the office
108 shall cancel the retirement allowance of a retiree if the reemployment with a participating
109 employer begins within one year of the retiree's retirement date.

110 (b) The office may not cancel the retirement allowance of a retiree who is reemployed
111 with a participating employer within one year of the retiree's retirement date if:

112 (i) the retiree is not reemployed by a participating employer for a period of at least 60
113 days from the retiree's retirement date;

114 (ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree
115 does not receive any employer ~~provided~~ paid benefits, including:

116 (A) retirement service credit or retirement related contributions;

117 ~~[(A)]~~ (B) medical benefits;

118 ~~[(B)]~~ (C) dental benefits;

119 ~~[(C)]~~ (D) other insurance benefits except for workers' compensation as provided under
120 Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease
121 Act, and withholdings required by federal or state law for Social Security, Medicare, and
122 unemployment insurance; or

123 ~~[(D)]~~ (E) paid time off, including sick, annual, or other type of leave; and

124 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in
125 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the
126 retiree's retirement allowance is based; or

127 (B) the retiree is reemployed as a judge as defined under Section [78A-11-102](#).

128 (c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection
129 (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar
130 year as measured by a United States Bureau of Labor Statistics Consumer Price Index average
131 as determined by the board.

132 (d) The office shall cancel the retirement allowance of a retiree for the remainder of the
133 calendar year if the reemployment with a participating employer exceeds the limitation under
134 Subsection (3)(b)(iii)(A).

135 (e) The office may not cancel the retirement allowance of a retiree who is reemployed
136 with a participating employer within one year of the retiree's retirement date if:

137 (i) the retiree:

138 (A) is not reemployed by a participating employer for a period of at least 60 days from
139 the retiree's retirement date;

140 (B) is reemployed by a different agency;

141 (C) is reemployed by a participating employer with a principal place of employment for
142 the retiree in:

143 (I) a county with a population of less than 45,000; or

144 (II) a municipality or town with a population of less than 10,000; and

145 (D) does not receive any employer paid retirement service credit or retirement related
146 contributions from the participating employer; and

147 (ii) the participating employer pays the contribution rate to the office as if the retiree's
148 reemployed position were considered to be an eligible, full-time position within that system,
149 but the retiree does not earn additional service credit.

150 (f) Any contribution paid to the office under Subsection (3)(e)(ii) shall be applied to
151 the system that would have covered the retiree if the retiree's reemployed position were
152 considered to be an eligible, full-time position within that system.

153 ~~[(e)]~~ (g) If a retiree is reemployed under the provisions of Subsection (3)(b)~~;~~ or (3)(e),
154 the termination date of the reemployment, as confirmed in writing by the participating
155 employer, is considered the retiree's retirement date for the purpose of calculating the
156 separation requirement under Subsection (3)(a).

157 ~~[(f) If a retiree received a retirement allowance in error, due to reemployment in~~
158 ~~violation of this section:]~~

159 ~~[(i) the office shall cancel the retiree's retirement allowance; and]~~

160 ~~[(ii) if the retiree applies for a future benefit, the office shall recover any overpayment~~
161 ~~in accordance with the provisions of Section 49-11-607.]~~

162 (4) If a reemployed retiree has completed the one-year separation from employment
163 with a participating employer required under Subsection (3)(a), the retiree may elect to:

164 (a) earn additional service credit in accordance with this title and cancel the retiree's
165 retirement allowance; or

166 (b) continue to receive the retiree's retirement allowance and forfeit any retirement
167 related contribution from the participating employer who reemployed the retiree.

168 (5) (a) As used in this Subsection (5), "amortization rate" means the amortization rate,
169 as defined in Section 49-11-102, to be applied to the system that would have covered the retiree
170 if the retiree's reemployed position were deemed to be an eligible, full-time position within that
171 system.

172 (b) A participating employer who reemploys a retiree shall contribute to the office the
173 amortization rate if the reemployed retiree:

174 (i) has completed the one-year separation from employment with a participating
175 employer required under Subsection (3)(a); and

176 (ii) makes an election under Subsection (4)(b) to continue to receive a retirement
177 allowance while reemployed.

178 (c) A participating employer who reemploys a retiree in accordance with Subsection
179 (3)(b) is not required to contribute the amortization rate to the office.

180 (6) (a) A participating employer shall immediately notify the office:

- 181 (i) if the participating employer reemploys a retiree;
- 182 (ii) whether the reemployment is subject to Subsection (3)(b), (3)(e), or (4) of this
- 183 section; and
- 184 (iii) of any election by the retiree under Subsection (4).
- 185 (b) A participating employer shall certify to the office whether the position of an
- 186 elected official is or is not full time.
- 187 (c) A participating employer is liable to the office for a payment or failure to make a
- 188 payment in violation of this section.
- 189 (d) If a participating employer fails to notify the office in accordance with this section,
- 190 the participating employer is immediately subject to a compliance audit by the office.
- 191 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in
- 192 accordance with Subsection (7)(b) if the office receives notice or learns of:
- 193 (i) the reemployment of a retiree in violation of Subsection (1)(d), or (3); or
- 194 (ii) the election of a reemployed retiree under Subsection (4)(a).
- 195 (b) If the retiree is eligible for retirement coverage in the reemployed position, the
- 196 office shall cancel the allowance of a retiree who is subject to Subsection (7)(a), and reinstate
- 197 the retiree to active member status on the first day of the month following the date of:
- 198 (i) reemployment if the retiree is subject to Subsection (3); or
- 199 (ii) an election by an employee under Subsection (4)(a).
- 200 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
- 201 position:
- 202 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and
- 203 (ii) except as provided under Subsection (5)(c), the participating employer shall pay the
- 204 amortization rate to the office on behalf of the retiree.
- 205 (8) (a) [~~A~~] For a retiree subject to Subsection (7)(b) who retires within two years from
- 206 the date of reemployment, the office:
- 207 (i) [~~is not entitled to a recalculated~~] may not recalculate a retirement benefit for the
- 208 retiree; and
- 209 (ii) [~~will~~] shall resume the allowance that was being paid to the retiree at the time of
- 210 the cancellation.
- 211 (b) Subject to Subsection (2), for a retiree who is reinstated to active membership

212 under Subsection (7) and who retires two or more years after the date of reinstatement to active
213 membership, the office shall:

214 (i) resume [~~receiving~~] the allowance that was being paid at the time of cancellation;
215 and

216 (ii) [~~receive~~] calculate an additional allowance for the retiree based on the formula in
217 effect at the date of the subsequent retirement for all service credit accrued between the first
218 and subsequent retirement dates.

219 (9) (a) A retiree subject to this section shall report to the office the status of the
220 reemployment under Subsection (3) or (4).

221 (b) If the retiree fails to inform the office of an election under Subsection (4), the office
222 shall withhold one month's benefit for each month the retiree fails to inform the office under
223 Subsection (9)(a).

224 (10) A retiree shall be considered as having completed the one-year separation from
225 employment with a participating employer required under Subsection (3)(a), if the retiree:

226 (a) before retiring:

227 (i) was employed with a participating employer as a public safety service employee as
228 defined in Section [49-14-102](#), [49-15-102](#), or [49-23-102](#);

229 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury
230 resulting from external force or violence while performing the duties of the employment, and
231 for which injury the retiree would have been approved for total disability in accordance with
232 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if
233 years of service are not considered;

234 (iii) had less than 30 years of service credit but had sufficient service credit to retire,
235 with an unreduced allowance making the public safety service employee ineligible for
236 long-term disability payments under Title 49, Chapter 21, Public Employees' Long-Term
237 Disability Act, or a substantially similar long-term disability program; and

238 (iv) does not receive any long-term disability benefits from any participating employer;
239 and

240 (b) is reemployed by a different participating employer.

241 (11) If a retiree received a retirement allowance in error, due to reemployment in
242 violation of this section:

243 (a) the office shall cancel the retiree's retirement allowance;

244 (b) if the retiree applies for a future benefit, the office shall recover any overpayment in
245 accordance with the provisions of Section 49-11-607; and

246 (c) if a retiree or participating employer failed to report reemployment in violation of
247 this section, the retiree, participating employer, or both that are found to be responsible for the
248 failure to report are liable to the office for the amount of any overpayment resulting from the
249 violation.

250 [(H)] (12) The board may make rules to implement this section.

251 Section 2. Section **63I-1-249** is enacted to read:

252 **63I-1-249. Repeal dates, Title 49.**

253 Subsections 49-11-505(3)(e) and (f) are repealed on June 30, 2021.