

Senator Todd Weiler proposes the following substitute bill:

**POSTRETIREMENT EMPLOYMENT RESTRICTIONS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rich Cunningham**

Senate Sponsor: Todd Weiler

6	Cosponsors:	Sandra Hollins	Dixon M. Pitcher
7	Jacob L. Anderegg	Eric K. Hutchings	Marie H. Poulson
8	Joel K. Briscoe	Brad King	Angela Romero
9	Melvin R. Brown	Brian S. King	John R. Westwood
10	Susan Duckworth	Lee B. Perry	
	Lynn N. Hemingway		

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- requires that certain costs shall be included in the final contribution rates adopted and certified by the board;
- amends the earnings limitation for reemployed retirees who return to work for a participating employer;
- for a certain period of time, allows certain retirees to be reemployed with a participating employer after a certain period from the retiree's retirement date if the



24 retiree:

- 25 • does not receive certain employer provided retirement benefits for the
- 26 reemployment; and
- 27 • is reemployed by a different agency;
- 28 ▶ requires a participating employer to pay the contribution rate for a reemployed
- 29 retiree in certain circumstances; and
- 30 ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill provides a special effective date.

35 This bill provides a coordination clause.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **49-11-301**, as last amended by Laws of Utah 2004, Chapter 322

39 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256

40 **Utah Code Sections Affected by Coordination Clause:**

41 **49-11-1204**, Utah Code Annotated 1953

42 **49-11-1205**, Utah Code Annotated 1953



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

45 Section 1. Section **49-11-301** is amended to read:

46 **49-11-301. Creation -- Board to act as trustees of the fund -- Commingling and**  
47 **pooling of funds -- Interest earnings -- Funded ratio.**

48 (1) There is created a common trust fund known as the "Utah State Retirement  
49 Investment Fund" for the purpose of enlarging the investment base and simplifying investment  
50 procedures and functions.

51 (2) (a) The board shall act as trustees of the Utah State Retirement Investment Fund  
52 and, through the executive director, may commingle and pool the funds and investments of any  
53 system, plan, or program into the Utah State Retirement Investment Fund, if the principal  
54 amounts of the participating funds do not lose their individual identity and are maintained as

55 separate trust funds on the books of the office.

56 (b) (i) In combining the investments of any fund, each of the participating funds shall  
57 be credited initially with its share of the total assets transferred to the Utah State Retirement  
58 Investment Fund.

59 (ii) The value of the transferred assets shall be calculated in accordance with generally  
60 accepted accounting principles.

61 (c) Subsequent transfers of additional capital from participating funds shall be credited  
62 similarly to its respective trust account.

63 (d) The income or principal or equity credit belonging to one participating fund may  
64 not be transferred to another, except for the purpose of:

65 (i) actuarially recommended transfers in order to adjust employer contribution rates for  
66 an employer that participates in both contributory and noncontributory systems; or

67 (ii) transfers which reflect the value of service credit accrued in different systems  
68 during a member's career.

69 (3) The assets of the funds are for the exclusive benefit of the members, participants,  
70 and covered individuals and may not be diverted or appropriated for any purpose other than  
71 that permitted by this title.

72 (4) (a) Interest and other earnings shall be credited to each participating fund on a pro  
73 rata equity position basis.

74 (b) (i) A portion of the interest and other earnings of the common trust fund may be  
75 credited to a reserve account within the Utah State Retirement Investment Fund to meet  
76 adverse experiences arising from investments or other contingencies.

77 (ii) Each participating fund shall retain its proportionate equity in the reserve account.

78 (5) (a) The actuarial funded ratio of the systems may reach and be maintained at 110%,  
79 as determined by the board's actuary using assumptions adopted by the board, before the board  
80 is required to certify a decrease in contribution rates.

81 (b) ~~[The]~~ Except as provided in Subsection (6), the board may not increase  
82 contribution rates to attain an actuarial funded ratio greater than 100%.

83 (6) (a) The cost of any amendment to this title shall be included in the final  
84 contribution rates adopted and certified by the board in accordance with Subsections  
85 49-11-102(14) and 49-11-203(1)(l).

86 (b) If a preliminary certified contribution rate approved by the board prior to an annual  
87 General Session or Special Session of the Legislature was maintained at a previous year's level  
88 that is higher than the contribution rate calculated by the board's actuary for that year in  
89 accordance with Subsection (5)(a), the board's final certified contribution rate shall be the sum  
90 of the actuarially determined costs from any amendment to this title during the General Session  
91 or Special Session and the preliminary certified contribution rate.

92 Section 2. Section **49-11-505** is amended to read:

93 **49-11-505. Reemployment of a retiree -- Restrictions -- Penalties.**

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

95 (i) means a person who:

96 (A) retired from a participating employer; and

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

98 (ii) does not include a person:

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

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

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

102 Section [49-11-621](#) after July 1, 2010; and

103 (iii) does not include a person who is reemployed as an active senior judge or an active  
104 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by  
105 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

106 (b) (i) This section does not apply to employment as an elected official if the elected  
107 official's position is not full time as certified by the participating employer.

108 (ii) The provisions of this section apply to an elected official whose elected position is  
109 full time as certified by the participating employer.

110 (c) (i) This section does not apply to employment as a part-time appointed board  
111 member who does not receive any remuneration, stipend, or other benefit for the part-time  
112 appointed board member's service.

113 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does  
114 not include receipt of per diem and travel expenses up to the amounts established by the  
115 Division of Finance in:

116 (A) Section [63A-3-106](#);

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

118 (C) rules made by the Division of Finance according to Sections 63A-3-106 and  
119 63A-3-107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

163 (b) receive a retirement allowance.

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

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

169 (i) the retiree:

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

172 (B) is reemployed by a different agency;

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

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

176 (II) a municipality or town with a population of less than 10,000 that is located within a  
177 county with a population of less than 45,000;

178 (D) is reemployed as an educator, as defined in Section [53A-6-103](#);

179 (E) does not receive any employer paid retirement service credit or retirement related  
180 contributions from the participating employer; and

181 (F) only participates in postretirement reemployment under this Subsection (3)(b) for a  
182 maximum of five years; and

183 (ii) the participating employer pays the contribution rate to the office as if the retiree's  
184 reemployed position were considered to be an eligible, full-time position within that system,  
185 but the retiree does not earn additional service credit or receive a retirement related  
186 contribution.

187 (c) Any contribution paid to the office under Subsection (3)(b)(ii) shall be applied to  
188 the system that would have covered the retiree if the retiree's reemployed position were  
189 considered to be an eligible, full-time position within that system.

190 ~~[(b) The]~~ (d) The office may not cancel the retirement allowance of a retiree who is  
191 reemployed with a participating employer within one year of the retiree's retirement date if:

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

194 (ii) upon reemployment after the break in service under Subsection (3)~~[(b)]~~(d)(i), the  
195 retiree does not receive any employer provided benefits, including:

196 (A) medical benefits;

197 (B) dental benefits;

198 (C) other insurance benefits except for workers' compensation as provided under Title  
199 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law  
200 for social security, Medicare, and unemployment insurance; or

201 (D) paid time off, including sick, annual, or other type of leave; and

202 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in  
203 excess of the lesser of ~~[\$15,000]~~ \$17,500 or one-half of the retiree's final average salary upon  
204 which the retiree's retirement allowance is based; or

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

206 ~~[(e)]~~ (e) Beginning January 1, 2013, the board shall adjust the amounts under  
207 Subsection (3)~~[(b)]~~(d)(iii)(A) by the annual change in the Consumer Price Index during the  
208 previous calendar year as measured by a United States Bureau of Labor Statistics Consumer  
209 Price Index average as determined by the board.

210 ~~[(d)]~~ (f) The office shall cancel the retirement allowance of a retiree for the remainder  
211 of the calendar year if the reemployment with a participating employer exceeds the limitation  
212 under Subsection (3)~~[(b)]~~(d)(iii)(A).

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

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

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

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

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

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

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

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

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

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

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

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

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



- 241 (i) if the participating employer reemploys a retiree;
- 242 (ii) whether the reemployment is subject to Subsection (3)(b), (3)(d), or (4) of this
- 243 section; and
- 244 (iii) of any election by the retiree under Subsection (4).
- 245 (b) A participating employer shall certify to the office whether the position of an
- 246 elected official is or is not full time.
- 247 (c) A participating employer is liable to the office for a payment or failure to make a
- 248 payment in violation of this section.
- 249 (d) If a participating employer fails to notify the office in accordance with this section,
- 250 the participating employer is immediately subject to a compliance audit by the office.
- 251 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in
- 252 accordance with Subsection (7)(b) if the office receives notice or learns of:
- 253 (i) the reemployment of a retiree in violation of Subsection (1)(d) or (3); or
- 254 (ii) the election of a reemployed retiree under Subsection (4)(a).
- 255 (b) If the retiree is eligible for retirement coverage in the reemployed position, the
- 256 office shall cancel the allowance of a retiree who is subject to Subsection (7)(a), and reinstate
- 257 the retiree to active member status on the first day of the month following the date of:
- 258 (i) reemployment if the retiree is subject to Subsection (3); or
- 259 (ii) an election by an employee under Subsection (4)(a).
- 260 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
- 261 position:
- 262 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and
- 263 (ii) except as provided under Subsection (5)(c), the participating employer shall pay the
- 264 amortization rate to the office on behalf of the retiree.
- 265 (8) (a) [~~A~~] For a retiree subject to Subsection (7)(b) who retires within two years from
- 266 the date of reemployment, the office:
- 267 (i) [~~is not entitled to a recalculated~~] may not recalculate a retirement benefit for the
- 268 retiree; and
- 269 (ii) [~~will~~] shall resume the allowance that was being paid to the retiree at the time of
- 270 the cancellation.
- 271 (b) Subject to Subsection (2), for a retiree who is reinstated to active membership

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

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

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

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

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

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

286 (a) before retiring:

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

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

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

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

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

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

- 303 (a) the office shall cancel the retiree's retirement allowance;  
304 (b) if the retiree applies for a future benefit, the office shall recover any overpayment in  
305 accordance with the provisions of Section 49-11-607; and  
306 (c) if a retiree or participating employer failed to report reemployment in violation of  
307 this section, the retiree, participating employer, or both that are found to be responsible for the  
308 failure to report are liable to the office for the amount of any overpayment resulting from the  
309 violation.

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

311 Section 3. **Effective date.**

312 This bill takes effect on July 1, 2016.

313 Section 4. **Coordinating H.B. 86 with H.B. 51 -- Substantive amendments.**

314 If this H.B. 86 and H.B. 51, Recodification of Postretirement Reemployment  
315 Provisions, both pass and become law, it is the intent of the Legislature that the Office of  
316 Legislative Research and General Counsel prepare the Utah Code database for publication by:

317 (1) modifying Subsection 49-11-1204(4)(c) enacted by H.B. 51 to read:

318 "(c) A participating employer that reemploys a retiree in accordance with Subsection  
319 49-11-1205(1)(a) is not required to contribute the amortization rate to the office.";

320 (2) modifying Subsection 49-11-1205(1)(a)(iii) enacted by H.B. 51 to read:

321 "(iii) the retiree does not earn in any calendar year of reemployment an amount in  
322 excess of the lesser of \$17,500 or one-half of the retiree's final average salary upon which the  
323 retiree's retirement allowance is based."; and

324 (3) modifying Subsection 49-11-1205(1) enacted by H.B. 51 by adding new  
325 Subsections (1)(c) and (d) to read:

326 "(c) The office may not cancel the retirement allowance of a retiree who is reemployed  
327 with a participating employer within one year of the retiree's retirement date if:

328 (i) the retiree:

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

331 (B) is reemployed by a different agency;

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

334 (I) a county with a population of less than 45,000; or  
335 (II) a municipality or town with a population of less than 10,000 that is located within a  
336 county with a population of less than 45,000;  
337 (D) is reemployed as an educator, as defined in Section [53A-6-103](#);  
338 (E) does not receive any employer paid retirement service credit or retirement related  
339 contributions from the participating employer; and  
340 (F) only participates in postretirement reemployment under this Subsection (1)(c) for a  
341 maximum of five years; and  
342 (ii) the participating employer pays the contribution rate to the office as if the retiree's  
343 reemployed position were considered to be an eligible, full-time position within that system,  
344 but the retiree does not earn additional service credit or receive a retirement related  
345 contribution.  
346 (d) Any contribution paid to the office under Subsection (1)(c)(ii) shall be applied to  
347 the system that would have covered the retiree if the retiree's reemployed position were  
348 considered to be an eligible, full-time position within that system."