

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

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

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**LONG TITLE**

**Committee Note:**

The Retirement and Independent Entities Interim Committee recommended this bill.

**General Description:**

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

**Highlighted Provisions:**

This bill:

- amends the earnings limitation for reemployed retirees who return to work for a participating employer; and
- makes technical changes.

**Money Appropriated in this Bill:**



24 None

25 **Other Special Clauses:**

26 This bill provides a coordination clause.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256

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

31 **49-11-1205**, Utah Code Annotated 1953



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

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

35 **49-11-505. Reemployment of a retiree -- Restrictions -- Penalties.**

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

37 (i) means a person who:

38 (A) retired from a participating employer; and

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

40 (ii) does not include a person:

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

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

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

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

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

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

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

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

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

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

51 full time as certified by the participating employer.

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

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

54 appointed board member's service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

85 (C) insurance policy premiums paid by the participating employer in the event of death

86 of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

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

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

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

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

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

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

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

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

105 (b) receive a retirement allowance.

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

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

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

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

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

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

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

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

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

122           (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in  
123 excess of the lesser of ~~[\$15,000]~~ \$18,000 or one-half of the retiree's final average salary upon  
124 which the retiree's retirement allowance is based; or

125           (B) the retiree is reemployed as a judge as defined under Section 78A-11-102.

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

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

133           (e) If a retiree is reemployed under the provisions of Subsection (3)(b), the termination  
134 date of the reemployment, as confirmed in writing by the participating employer, is considered  
135 the retiree's retirement date for the purpose of calculating the separation requirement under  
136 Subsection (3)(a).

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

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

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

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

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

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

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

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

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

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

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

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

161 (i) if the participating employer reemploys a retiree;

162 (ii) whether the reemployment is subject to Subsection (3)(b) or (4) of this section; and

163 (iii) of any election by the retiree under Subsection (4).

164 (b) A participating employer shall certify to the office whether the position of an  
165 elected official is or is not full time.

166 (c) A participating employer is liable to the office for a payment or failure to make a  
167 payment in violation of this section.

168 (d) If a participating employer fails to notify the office in accordance with this section,  
169 the participating employer is immediately subject to a compliance audit by the office.

170 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in  
171 accordance with Subsection (7)(b) if the office receives notice or learns of:

172 (i) the reemployment of a retiree in violation of Subsection (1)(d) or (3); or

173 (ii) the election of a reemployed retiree under Subsection (4)(a).

174 (b) If the retiree is eligible for retirement coverage in the reemployed position, the  
175 office shall cancel the allowance of a retiree who is subject to Subsection (7)(a), and reinstate  
176 the retiree to active member status on the first day of the month following the date of:

177 (i) reemployment if the retiree is subject to Subsection (3); or

178 (ii) an election by an employee under Subsection (4)(a).

179 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed  
180 position:

181 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

182 (ii) except as provided under Subsection (5)(c), the participating employer shall pay the  
183 amortization rate to the office on behalf of the retiree.

184 (8) (a) [~~A~~] For a retiree subject to Subsection (7)(b) who retires within two years from  
185 the date of reemployment, the office:

186 (i) [~~is not entitled to a recalculated~~] may not recalculate a retirement benefit for the  
187 retiree; and

188 (ii) [~~will~~] shall resume the allowance that was being paid to the retiree at the time of  
189 the cancellation.

190 (b) Subject to Subsection (2), for a retiree who is reinstated to active membership  
191 under Subsection (7) and who retires two or more years after the date of reinstatement to active  
192 membership, the office shall:

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

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

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

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

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

205 (a) before retiring:

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

208 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury  
209 resulting from external force or violence while performing the duties of the employment, and

210 for which injury the retiree would have been approved for total disability in accordance with  
211 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if  
212 years of service are not considered;

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

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

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

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

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

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

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

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

230 Section 2. **Coordinating H.B. 86 with H.B. 51 -- Substantive amendments.**

231 If this H.B. 86 and H.B. 51, Recodification of Postretirement Reemployment  
232 Provisions, both pass and become law, it is the intent of the Legislature that the Office of  
233 Legislative Research and General Counsel prepare the Utah Code database for publication by  
234 modifying Subsection 49-11-1205(1)(a)(iii) enacted by H.B. 51 to read:

235 "(iii) the retiree does not earn in any calendar year of reemployment an amount in  
236 excess of the lesser of \$18,000 or one-half of the retiree's final average salary upon which the  
237 retiree's retirement allowance is based."