

## HB0117S02 compared with HB0117

~~text~~ shows text that was in HB0117 but was deleted in HB0117S02.

text shows text that was not in HB0117 but was inserted into HB0117S02.

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Representative Daniel McCay proposes the following substitute bill:

### MODIFICATIONS TO POSTRETIREMENT REEMPLOYMENT

#### RESTRICTIONS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rich Cunningham**

Senate Sponsor: \_\_\_\_\_

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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;
- ▶ 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

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reemployment;

- is reemployed by a different agency; and
  - is reemployed by a participating employer that employs the retiree as an educator at a school that receives Title I funding;
- ▶ requires a participating employer to pay the contribution rate for a reemployed retiree in certain circumstances; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

[49-11-301, as last amended by Laws of Utah 2004, Chapter 322](#)

[49-11-505, as last amended by Laws of Utah 2015, Chapters 243 and 256](#)

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

[Section 1. Section 49-11-301 is amended to read:](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) (a) ~~The~~ Except as provided in Subsection (6), the actuarial funded ratio of the systems may reach and be maintained at 110%, as determined by the board's actuary using assumptions adopted by the board, before the board is required to certify a decrease in contribution rates.

(b) The board may not increase contribution rates to attain an actuarial funded ratio greater than 100%.

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

(b) If a preliminary certified contribution rate approved by the board prior to an annual General Session or Special Session of the Legislature was maintained at a previous year's level that is higher than the contribution rate calculated by the board's actuary for that year in

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accordance with Subsection (5)(a), the board's final certified contribution rate shall be the sum of the actuarially determined costs from any amendment to this title during the General Session or Special Session and the preliminary certified contribution rate.

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

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

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

(i) means a person who:

(A) retired from a participating employer; and

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

(ii) does not include a person:

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

(B) whose participating employer that reemployed the person under Subsection (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with Section 49-11-621 after July 1, 2010; and

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

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

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

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

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

(A) Section 63A-3-106;

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

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

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

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

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

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

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

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

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

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

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

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

(B) a length-of-service award;

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

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

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

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

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determined by the board.

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

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

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

- (a) (i) earn additional service credit; or
- (ii) receive any retirement related contribution from a participating employer; and
- (b) receive a retirement allowance.

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

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

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

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

(A) retirement service credit or retirement related contributions;

~~(A)~~ (B) medical benefits;

~~(B)~~ (C) dental benefits;

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

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

(iii) (A) the retiree does not earn in any calendar year of reemployment an amount in

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excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the retiree's retirement allowance is based; or

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

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

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

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

(i) the retiree:

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

(B) is reemployed by a different agency;

(C) is reemployed by a participating employer with a principal place of employment for the retiree in a school that receives funding under Title I of the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6301, and the retiree is reemployed as an educator, as defined in Section 53A-6-103; and

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

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

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

~~(e)~~ (g) If a retiree is reemployed under the provisions of Subsection (3)(b)[5] or (3)(e), the termination date of the reemployment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the

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separation requirement under Subsection (3)(a).

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

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

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

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

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

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

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

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

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

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

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

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

(i) if the participating employer reemploys a retiree;

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

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

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

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

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

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

- (i) the reemployment of a retiree in violation of Subsection (1)(d) or (3); or
- (ii) the election of a reemployed retiree under Subsection (4)(a).

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

- (i) reemployment if the retiree is subject to Subsection (3); or
- (ii) an election by an employee under Subsection (4)(a).

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

- (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and
- (ii) except as provided under Subsection (5)(c), the participating employer shall pay the

amortization rate to the office on behalf of the retiree.

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

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

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

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

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

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

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and subsequent retirement dates.

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

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

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

(a) before retiring:

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

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

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

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

(b) is reemployed by a different participating employer.

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

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

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

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

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violation.

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

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**Legislative Review Note**

**Office of Legislative Research and General Counsel†**