

RETIREMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Kraig Powell

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending certain retirement provisions.

Highlighted Provisions:

This bill:

- requires the Utah State Retirement Board to increase certified employer contribution rates to reflect any increased costs from retirement benefit enhancements enacted during a general session or special session under specified conditions;

- amends the definition of "regular full-time employee" to exclude from retirement participation certain classified school employees who work on a contract for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and

- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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



28 **49-12-102**, as last amended by Laws of Utah 2015, Chapter 243
29 **49-13-102**, as last amended by Laws of Utah 2014, Chapter 15
30 **49-22-102**, as last amended by Laws of Utah 2013, Chapters 109 and 127

31

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

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

34 **49-11-301. Creation -- Board to act as trustees of the fund -- Commingling and**
35 **pooling of funds -- Interest earnings -- Funded ratio.**

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

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

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

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

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

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

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

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

57 (3) The assets of the funds are for the exclusive benefit of the members, participants,
58 and covered individuals and may not be diverted or appropriated for any purpose other than

59 that permitted by this title.

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

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

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

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

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

71 (6) (a) The cost of any amendment to this title shall be included in the final
72 contribution rates adopted and certified by the board in accordance with Subsections
73 49-11-102(14) and 49-11-203(1)(l).

74 (b) If a preliminary certified contribution rate approved by the board prior to an annual
75 general session or special session of the Legislature was maintained at a previous year's level
76 that is higher than the contribution rate calculated by the board's actuary for that year in
77 accordance with Subsection (5)(a), the board's final certified contribution rate shall be the sum
78 of the actuarially determined costs from any amendment to this title during the general session
79 or special session and the preliminary certified contribution rate.

80 Section 2. Section **49-12-102** is amended to read:

81 **49-12-102. Definitions.**

82 As used in this chapter:

83 (1) "Benefits normally provided":

84 (a) means a benefit offered by an employer, including:

85 (i) a leave benefit of any kind;

86 (ii) insurance coverage of any kind if the employer pays some or all of the premium for
87 the coverage;

88 (iii) employer contributions to a health savings account, health reimbursement account,
89 health reimbursement arrangement, or medical expense reimbursement plan; and

90 (iv) a retirement benefit of any kind if the employer pays some or all of the cost of the
91 benefit; and

92 (b) does not include:

93 (i) a payment for social security;

94 (ii) workers' compensation insurance;

95 (iii) unemployment insurance;

96 (iv) a payment for Medicare;

97 (v) a payment or insurance required by federal or state law that is similar to a payment
98 or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);

99 (vi) any other benefit that state or federal law requires an employer to provide an
100 employee who would not otherwise be eligible to receive the benefit; or

101 (vii) any benefit that an employer provides an employee in order to avoid a penalty or
102 tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health
103 Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal
104 regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

105 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total
106 amount of payments made by a participating employer to a member of this system for services
107 rendered to the participating employer, including:

108 (i) bonuses;

109 (ii) cost-of-living adjustments;

110 (iii) other payments currently includable in gross income and that are subject to social
111 security deductions, including any payments in excess of the maximum amount subject to
112 deduction under social security law;

113 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
114 or other benefits authorized by federal law; and

115 (v) member contributions.

116 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
117 under Internal Revenue Code, Section 401(a)(17).

118 (c) "Compensation" does not include:

119 (i) the monetary value of remuneration paid in kind, including a residence or use of
120 equipment;

- 121 (ii) the cost of any employment benefits paid for by the participating employer;
- 122 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
123 otherwise ineligible for service credit;
- 124 (iv) any payments upon termination, including accumulated vacation, sick leave
125 payments, severance payments, compensatory time payments, or any other special payments; or
- 126 (v) any allowances or payments to a member for costs or expenses paid by the
127 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
128 housing costs, insurance costs, equipment costs, and dependent care costs.
- 129 (d) The executive director may determine if a payment not listed under this Subsection
130 (2) falls within the definition of compensation.
- 131 (3) "Final average salary" means the amount computed by averaging the highest five
132 years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), and
133 (d).
- 134 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
135 compensation in any one of the years used may not exceed the previous year's compensation by
136 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
137 of the dollar during the previous year, as measured by a United States Bureau of Labor
138 Statistics Consumer Price Index average as determined by the board.
- 139 (b) In cases where the participating employer provides acceptable documentation to the
140 office, the limitation in Subsection (3)(a) may be exceeded if:
- 141 (i) the member has transferred from another agency; or
142 (ii) the member has been promoted to a new position.
- 143 (c) If the member retires more than six months from the date of termination of
144 employment, the member is considered to have been in service at the member's last rate of pay
145 from the date of the termination of employment to the effective date of retirement for purposes
146 of computing the member's final average salary only.
- 147 (d) If the member has less than five years of service credit in this system, final average
148 salary means the average annual compensation paid to the member during the full period of
149 service credit.
- 150 (4) "Participating employer" means an employer which meets the participation
151 requirements of Sections [49-12-201](#) and [49-12-202](#).

152 (5) (a) "Regular full-time employee" means an employee whose term of employment
153 for a participating employer contemplates continued employment during a fiscal or calendar
154 year and whose employment normally requires an average of 20 hours or more per week,
155 except as modified by the board, and who receives benefits normally provided by the
156 participating employer.

157 (b) "Regular full-time employee" includes:

158 (i) a teacher whose term of employment for a participating employer contemplates
159 continued employment during a school year and who teaches half-time or more;

160 (ii) a classified school employee:

161 (A) who is hired before July 1, 2013; and

162 (B) whose employment normally requires an average of 20 hours per week or more for
163 a participating employer, regardless of benefits provided;

164 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
165 of January 1, 1990, as provided in Section [49-12-407](#);

166 (iv) a faculty member or employee of an institution of higher education who is
167 considered full-time by that institution of higher education; and

168 (v) an individual who otherwise meets the definition of this Subsection (5) who
169 performs services for a participating employer through a professional employer organization or
170 similar arrangement.

171 (c) "Regular full-time employee" does not include a classified school employee:

172 (i) (A) who is hired on or after July 1, 2013; and

173 (B) who does not receive benefits normally provided by the participating employer
174 even if the employment normally requires an average of 20 hours per week or more for a
175 participating employer; ~~or~~

176 (ii) (A) who is hired before July 1, 2013;

177 (B) who did not qualify as a regular full-time employee before July 1, 2013;

178 (C) who does not receive benefits normally provided by the participating employer;

179 and

180 (D) whose employment hours are increased on or after July 1, 2013, to require an
181 average of 20 hours per week or more for a participating employer~~[-];~~ or

182 (iii) who is a person working on a contract:

183 (A) for the purposes of vocational rehabilitation and the employment and training of
184 people with significant disabilities; and

185 (B) that has been set aside from procurement requirements by the state pursuant to
186 Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

187 (6) "System" means the Public Employees' Contributory Retirement System created
188 under this chapter.

189 (7) "Years of service credit" means:

190 (a) a period consisting of 12 full months as determined by the board;

191 (b) a period determined by the board, whether consecutive or not, during which a
192 regular full-time employee performed services for a participating employer, including any time
193 the regular full-time employee was absent on a paid leave of absence granted by a participating
194 employer or was absent in the service of the United States government on military duty as
195 provided by this chapter; or

196 (c) the regular school year consisting of not less than eight months of full-time service
197 for a regular full-time employee of an educational institution.

198 Section 3. Section 49-13-102 is amended to read:

199 **49-13-102. Definitions.**

200 As used in this chapter:

201 (1) "Benefits normally provided" has the same meaning as defined in Section
202 49-12-102.

203 (2) (a) Except as provided in Subsection (2)(c), "compensation" means the total
204 amount of payments made by a participating employer to a member of this system for services
205 rendered to the participating employer, including:

206 (i) bonuses;

207 (ii) cost-of-living adjustments;

208 (iii) other payments currently includable in gross income and that are subject to social
209 security deductions, including any payments in excess of the maximum amount subject to
210 deduction under social security law; and

211 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
212 or other benefits authorized by federal law.

213 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed

214 under Internal Revenue Code, Section 401(a)(17).

215 (c) "Compensation" does not include:

216 (i) the monetary value of remuneration paid in kind, including a residence or use of
217 equipment;

218 (ii) the cost of any employment benefits paid for by the participating employer;

219 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
220 otherwise ineligible for service credit;

221 (iv) any payments upon termination, including accumulated vacation, sick leave
222 payments, severance payments, compensatory time payments, or any other special payments; or

223 (v) any allowances or payments to a member for costs or expenses paid by the
224 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
225 housing costs, insurance costs, equipment costs, and dependent care costs.

226 (d) The executive director may determine if a payment not listed under this Subsection
227 (2) falls within the definition of compensation.

228 (3) "Final average salary" means the amount computed by averaging the highest three
229 years of annual compensation preceding retirement subject to the following:

230 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
231 compensation in any one of the years used may not exceed the previous year's compensation by
232 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
233 of the dollar during the previous year, as measured by a United States Bureau of Labor
234 Statistics Consumer Price Index average as determined by the board.

235 (b) In cases where the participating employer provides acceptable documentation to the
236 office, the limitation in Subsection (3)(a) may be exceeded if:

237 (i) the member has transferred from another agency; or

238 (ii) the member has been promoted to a new position.

239 (c) If the member retires more than six months from the date of termination of
240 employment and for purposes of computing the member's final average salary only, the
241 member is considered to have been in service at the member's last rate of pay from the date of
242 the termination of employment to the effective date of retirement.

243 (4) "Participating employer" means an employer which meets the participation
244 requirements of Sections [49-13-201](#) and [49-13-202](#).

245 (5) (a) "Regular full-time employee" means an employee whose term of employment
246 for a participating employer contemplates continued employment during a fiscal or calendar
247 year and whose employment normally requires an average of 20 hours or more per week,
248 except as modified by the board, and who receives benefits normally provided by the
249 participating employer.

250 (b) "Regular full-time employee" includes:

251 (i) a teacher whose term of employment for a participating employer contemplates
252 continued employment during a school year and who teaches half time or more;

253 (ii) a classified school employee:

254 (A) who is hired before July 1, 2013; and

255 (B) whose employment normally requires an average of 20 hours per week or more for
256 a participating employer, regardless of benefits provided;

257 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
258 of January 1, 1990, as provided in Section [49-13-407](#);

259 (iv) a faculty member or employee of an institution of higher education who is
260 considered full time by that institution of higher education; and

261 (v) an individual who otherwise meets the definition of this Subsection (5) who
262 performs services for a participating employer through a professional employer organization or
263 similar arrangement.

264 (c) "Regular full-time employee" does not include a classified school employee:

265 (i) (A) who is hired on or after July 1, 2013; and

266 (B) who does not receive benefits normally provided by the participating employer
267 even if the employment normally requires an average of 20 hours per week or more for a
268 participating employer; ~~or~~

269 (ii) (A) who is hired before July 1, 2013;

270 (B) who did not qualify as a regular full-time employee before July 1, 2013;

271 (C) who does not receive benefits normally provided by the participating employer;

272 and

273 (D) whose employment hours are increased on or after July 1, 2013, to require an
274 average of 20 hours per week or more for a participating employer~~[-];~~ or

275 (iii) who is a person working on a contract:

276 (A) for the purposes of vocational rehabilitation and the employment and training of
277 people with significant disabilities; and

278 (B) that has been set aside from procurement requirements by the state pursuant to
279 Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

280 (6) "System" means the Public Employees' Noncontributory Retirement System.

281 (7) "Years of service credit" means:

282 (a) a period consisting of 12 full months as determined by the board;

283 (b) a period determined by the board, whether consecutive or not, during which a
284 regular full-time employee performed services for a participating employer, including any time
285 the regular full-time employee was absent on a paid leave of absence granted by a participating
286 employer or was absent in the service of the United States government on military duty as
287 provided by this chapter; or

288 (c) the regular school year consisting of not less than eight months of full-time service
289 for a regular full-time employee of an educational institution.

290 Section 4. Section 49-22-102 is amended to read:

291 **49-22-102. Definitions.**

292 As used in this chapter:

293 (1) "Benefits normally provided" has the same meaning as defined in Section
294 49-12-102.

295 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total
296 amount of payments made by a participating employer to a member of this system for services
297 rendered to the participating employer, including:

298 (i) bonuses;

299 (ii) cost-of-living adjustments;

300 (iii) other payments currently includable in gross income and that are subject to social
301 security deductions, including any payments in excess of the maximum amount subject to
302 deduction under social security law;

303 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
304 or other benefits authorized by federal law; and

305 (v) member contributions.

306 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed

307 under Internal Revenue Code, Section 401(a)(17).

308 (c) "Compensation" does not include:

309 (i) the monetary value of remuneration paid in kind, including a residence or use of
310 equipment;

311 (ii) the cost of any employment benefits paid for by the participating employer;

312 (iii) compensation paid to a temporary employee or an employee otherwise ineligible
313 for service credit;

314 (iv) any payments upon termination, including accumulated vacation, sick leave
315 payments, severance payments, compensatory time payments, or any other special payments; or

316 (v) any allowances or payments to a member for costs or expenses paid by the
317 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
318 housing costs, insurance costs, equipment costs, and dependent care costs.

319 (d) The executive director may determine if a payment not listed under this Subsection
320 (2) falls within the definition of compensation.

321 (3) "Corresponding Tier I system" means the system or plan that would have covered
322 the member if the member had initially entered employment before July 1, 2011.

323 (4) "Final average salary" means the amount computed by averaging the highest five
324 years of annual compensation preceding retirement subject to Subsections (4)(a), (b), (c), and
325 (d).

326 (a) Except as provided in Subsection (4)(b), the percentage increase in annual
327 compensation in any one of the years used may not exceed the previous year's compensation by
328 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
329 of the dollar during the previous year, as measured by a United States Bureau of Labor
330 Statistics Consumer Price Index average as determined by the board.

331 (b) In cases where the participating employer provides acceptable documentation to the
332 office, the limitation in Subsection (4)(a) may be exceeded if:

333 (i) the member has transferred from another agency; or

334 (ii) the member has been promoted to a new position.

335 (c) If the member retires more than six months from the date of termination of
336 employment, the member is considered to have been in service at the member's last rate of pay
337 from the date of the termination of employment to the effective date of retirement for purposes

338 of computing the member's final average salary only.

339 (d) If the member has less than five years of service credit in this system, final average
340 salary means the average annual compensation paid to the member during the full period of
341 service credit.

342 (5) "Participating employer" means an employer which meets the participation
343 requirements of:

344 (a) Sections 49-12-201 and 49-12-202;

345 (b) Sections 49-13-201 and 49-13-202;

346 (c) Section 49-19-201; or

347 (d) Section 49-22-201 or 49-22-202.

348 (6) (a) "Regular full-time employee" means an employee whose term of employment
349 for a participating employer contemplates continued employment during a fiscal or calendar
350 year and whose employment normally requires an average of 20 hours or more per week,
351 except as modified by the board, and who receives benefits normally provided by the
352 participating employer.

353 (b) "Regular full-time employee" includes:

354 (i) a teacher whose term of employment for a participating employer contemplates
355 continued employment during a school year and who teaches half time or more;

356 (ii) a classified school employee:

357 (A) who is hired before July 1, 2013; and

358 (B) whose employment normally requires an average of 20 hours per week or more for
359 a participating employer, regardless of benefits provided;

360 (iii) an appointive officer whose appointed position is full time as certified by the
361 participating employer;

362 (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the
363 attorney general, and a state legislator;

364 (v) an elected official not included under Subsection (6)(b)(iv) whose elected position
365 is full time as certified by the participating employer;

366 (vi) a faculty member or employee of an institution of higher education who is
367 considered full time by that institution of higher education; and

368 (vii) an individual who otherwise meets the definition of this Subsection (6) who

369 performs services for a participating employer through a professional employer organization or
370 similar arrangement.

371 (c) "Regular full-time employee" does not include:

372 (i) a firefighter service employee as defined in Section [49-23-102](#);

373 (ii) a public safety service employee as defined in Section [49-23-102](#);

374 (iii) a classified school employee:

375 (A) who is hired on or after July 1, 2013; and

376 (B) who does not receive benefits normally provided by the participating employer

377 even if the employment normally requires an average of 20 hours per week or more for a

378 participating employer; [~~or~~]

379 (iv) a classified school employee:

380 (A) who is hired before July 1, 2013;

381 (B) who did not qualify as a regular full-time employee before July 1, 2013;

382 (C) who does not receive benefits normally provided by the participating employer;

383 and

384 (D) whose employment hours are increased on or after July 1, 2013, to require an

385 average of 20 hours per week or more for a participating employer[-]; or

386 (E) who is a person working on a contract:

387 (I) for the purposes of vocational rehabilitation and the employment and training of
388 people with significant disabilities; and

389 (II) that has been set aside from procurement requirements by the state pursuant to
390 Section [63G-6a-805](#) or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

391 (7) "System" means the New Public Employees' Tier II Contributory Retirement
392 System created under this chapter.

393 (8) "Years of service credit" means:

394 (a) a period consisting of 12 full months as determined by the board;

395 (b) a period determined by the board, whether consecutive or not, during which a
396 regular full-time employee performed services for a participating employer, including any time
397 the regular full-time employee was absent on a paid leave of absence granted by a participating
398 employer or was absent in the service of the United States government on military duty as
399 provided by this chapter; or

400 (c) the regular school year consisting of not less than eight months of full-time service
401 for a regular full-time employee of an educational institution.

402 Section 5. **Effective date.**

403 **Ŝ→ (1) [~~H~~] Except as provided in Subsection (2), if ←Ŝ approved by two-thirds of all the**
403a **members elected to each house, this bill takes effect**
404 **upon approval by the governor, or the day following the constitutional time limit of Utah**
405 **Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,**
406 **the date of veto override.**

406a **Ŝ→ (2) The amendments to Section 49-11-301 in this bill take effect on July 1, 2016. ←Ŝ**

Legislative Review Note
Office of Legislative Research and General Counsel