

Senator Todd Weiler proposes the following substitute bill:

RETIREMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ 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:

49-12-102, as last amended by Laws of Utah 2015, Chapter 243

49-13-102, as last amended by Laws of Utah 2014, Chapter 15



26 49-22-102, as last amended by Laws of Utah 2013, Chapters 109 and 127



27
28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **49-12-102** is amended to read:

30 **49-12-102. Definitions.**

31 As used in this chapter:

32 (1) "Benefits normally provided":

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

34 (i) a leave benefit of any kind;

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

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

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

41 (b) does not include:

42 (i) a payment for social security;

43 (ii) workers' compensation insurance;

44 (iii) unemployment insurance;

45 (iv) a payment for Medicare;

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

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

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

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

- 57 (i) bonuses;
- 58 (ii) cost-of-living adjustments;
- 59 (iii) other payments currently includable in gross income and that are subject to social
60 security deductions, including any payments in excess of the maximum amount subject to
61 deduction under social security law;
- 62 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
63 or other benefits authorized by federal law; and
- 64 (v) member contributions.
- 65 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
66 under Internal Revenue Code, Section 401(a)(17).
- 67 (c) "Compensation" does not include:
 - 68 (i) the monetary value of remuneration paid in kind, including a residence or use of
69 equipment;
 - 70 (ii) the cost of any employment benefits paid for by the participating employer;
 - 71 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
72 otherwise ineligible for service credit;
 - 73 (iv) any payments upon termination, including accumulated vacation, sick leave
74 payments, severance payments, compensatory time payments, or any other special payments; or
 - 75 (v) any allowances or payments to a member for costs or expenses paid by the
76 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
77 housing costs, insurance costs, equipment costs, and dependent care costs.
- 78 (d) The executive director may determine if a payment not listed under this Subsection
79 (2) falls within the definition of compensation.
- 80 (3) "Final average salary" means the amount computed by averaging the highest five
81 years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), and
82 (d).
 - 83 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
84 compensation in any one of the years used may not exceed the previous year's compensation by
85 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
86 of the dollar during the previous year, as measured by a United States Bureau of Labor
87 Statistics Consumer Price Index average as determined by the board.

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

- 90 (i) the member has transferred from another agency; or
- 91 (ii) the member has been promoted to a new position.

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

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

99 (4) "Participating employer" means an employer which meets the participation
100 requirements of Sections 49-12-201 and 49-12-202.

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

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

- 107 (i) a teacher whose term of employment for a participating employer contemplates
108 continued employment during a school year and who teaches half-time or more;
- 109 (ii) a classified school employee:

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

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

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

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

117 (v) an individual who otherwise meets the definition of this Subsection (5) who
118 performs services for a participating employer through a professional employer organization or

119 similar arrangement.

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

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

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

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

124 participating employer; ~~or~~

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

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

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

128 and

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

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

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

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

134 (B) that has been set aside from procurement requirements by the state pursuant to

135 Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

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

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

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

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

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

147 Section 2. Section **49-13-102** is amended to read:

148 **49-13-102. Definitions.**

149 As used in this chapter:

150 (1) "Benefits normally provided" has the same meaning as defined in Section
151 49-12-102.

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

- 155 (i) bonuses;
- 156 (ii) cost-of-living adjustments;
- 157 (iii) other payments currently includable in gross income and that are subject to social
158 security deductions, including any payments in excess of the maximum amount subject to
159 deduction under social security law; and
- 160 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
161 or other benefits authorized by federal law.

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

164 (c) "Compensation" does not include:

- 165 (i) the monetary value of remuneration paid in kind, including a residence or use of
166 equipment;
- 167 (ii) the cost of any employment benefits paid for by the participating employer;
- 168 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
169 otherwise ineligible for service credit;
- 170 (iv) any payments upon termination, including accumulated vacation, sick leave
171 payments, severance payments, compensatory time payments, or any other special payments; or
- 172 (v) any allowances or payments to a member for costs or expenses paid by the
173 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
174 housing costs, insurance costs, equipment costs, and dependent care costs.

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

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

- 179 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
180 compensation in any one of the years used may not exceed the previous year's compensation by

181 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
182 of the dollar during the previous year, as measured by a United States Bureau of Labor
183 Statistics Consumer Price Index average as determined by the board.

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

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

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

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

192 (4) "Participating employer" means an employer which meets the participation
193 requirements of Sections 49-13-201 and 49-13-202.

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

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

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

202 (ii) a classified school employee:

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

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

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

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

210 (v) an individual who otherwise meets the definition of this Subsection (5) who
211 performs services for a participating employer through a professional employer organization or

212 similar arrangement.

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

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

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

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

217 participating employer; [~~or~~]

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

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

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

221 and

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

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

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

225 (A) for the purposes of vocational rehabilitation and the employment and training of

226 people with significant disabilities; and

227 (B) that has been set aside from procurement requirements by the state pursuant to

228 Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

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

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

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

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

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

239 Section 3. Section **49-22-102** is amended to read:

240 **49-22-102. Definitions.**

241 As used in this chapter:

242 (1) "Benefits normally provided" has the same meaning as defined in Section

243 49-12-102.

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

247 (i) bonuses;

248 (ii) cost-of-living adjustments;

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

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

254 (v) member contributions.

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

257 (c) "Compensation" does not include:

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

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

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

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

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

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

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

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

274 (d).

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

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

- 282 (i) the member has transferred from another agency; or
- 283 (ii) the member has been promoted to a new position.

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

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

291 (5) "Participating employer" means an employer which meets the participation
292 requirements of:

- 293 (a) Sections 49-12-201 and 49-12-202;
- 294 (b) Sections 49-13-201 and 49-13-202;
- 295 (c) Section 49-19-201; or
- 296 (d) Section 49-22-201 or 49-22-202.

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

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

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

- 305 (ii) a classified school employee:
- 306 (A) who is hired before July 1, 2013; and
- 307 (B) whose employment normally requires an average of 20 hours per week or more for
- 308 a participating employer, regardless of benefits provided;
- 309 (iii) an appointive officer whose appointed position is full time as certified by the
- 310 participating employer;
- 311 (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the
- 312 attorney general, and a state legislator;
- 313 (v) an elected official not included under Subsection (6)(b)(iv) whose elected position
- 314 is full time as certified by the participating employer;
- 315 (vi) a faculty member or employee of an institution of higher education who is
- 316 considered full time by that institution of higher education; and
- 317 (vii) an individual who otherwise meets the definition of this Subsection (6) who
- 318 performs services for a participating employer through a professional employer organization or
- 319 similar arrangement.
- 320 (c) "Regular full-time employee" does not include:
- 321 (i) a firefighter service employee as defined in Section 49-23-102;
- 322 (ii) a public safety service employee as defined in Section 49-23-102;
- 323 (iii) a classified school employee:
- 324 (A) who is hired on or after July 1, 2013; and
- 325 (B) who does not receive benefits normally provided by the participating employer
- 326 even if the employment normally requires an average of 20 hours per week or more for a
- 327 participating employer; ~~or~~
- 328 (iv) a classified school employee:
- 329 (A) who is hired before July 1, 2013;
- 330 (B) who did not qualify as a regular full-time employee before July 1, 2013;
- 331 (C) who does not receive benefits normally provided by the participating employer;
- 332 and
- 333 (D) whose employment hours are increased on or after July 1, 2013, to require an
- 334 average of 20 hours per week or more for a participating employer[-]; or
- 335 (E) who is a person working on a contract:

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

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

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

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

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

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

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

351 **Section 4. Effective date.**

352 If approved by two-thirds of all the members elected to each house, this bill takes effect
353 upon approval by the governor, or the day following the constitutional time limit of Utah
354 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
355 the date of veto override.