

SB0095S01 compared with SB0095

~~deleted text~~ shows text that was in SB0095 but was deleted in SB0095S01.

Inserted text shows text that was not in SB0095 but was inserted into SB0095S01.

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Senator Jani Iwamoto proposes the following substitute bill:

EDUCATOR POSTRETIREMENT REEMPLOYMENT~~}~~

~~}~~AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: ~~{~~ Steve Eliason

LONG TITLE

General Description:

This bill modifies the Postretirement Reemployment Restrictions Act by amending provisions relating to postretirement reemployment for educators.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ allows certain educator retirees 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 reemployment; and

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- is reemployed by a different participating employer than the participating employer that employed the retiree at the time of retirement ~~{, and}~~ except in limited circumstances;
- ▶ requires a participating employer to pay certain amounts for a reemployed retiree in certain circumstances;
- ▶ requires certain member certifications on the retirement application form;
- ▶ requires the Utah State Retirement Office to report certain information to an interim committee of the Legislature;
- ▶ authorizes the board to modify the annual cost-of-living adjustment of certain reemployed retirees in certain circumstances;
- ▶ specifies penalties for violating the reemployment provisions; 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:

49-11-1202, as enacted by Laws of Utah 2016, Chapter 310 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 310

49-11-1205, as last amended by Laws of Utah 2017, Chapter 141

49-11-1206, as enacted by Laws of Utah 2016, Chapter 310 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 310

49-11-1207, as last amended by Laws of Utah 2017, Chapter 141

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

Section 1. Section **49-11-1202** is amended to read:

49-11-1202. Definitions.

As used in this part:

- (1) (a) "Affiliated emergency services worker" means a person who:
 - (i) is employed by a participating employer;

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(ii) performs emergency services for another participating employer that is a different agency;

(iii) is trained in techniques and skills required for the emergency service;

(iv) continues to receive regular training required for the service;

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

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

(b) "Affiliated emergency services worker" does not include a person who performs work or service but does not meet the requirements of Subsection (1)(a).

(2) "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.

(3) (a) "Reemployed," "reemploy," or "reemployment" means work or service performed for a participating employer after retirement, in exchange for compensation.

(b) Reemployment includes work or service performed on a contract for a participating employer if the retiree is:

(i) listed as the contractor; or

(ii) an owner, partner, or principal of the contractor.

(4) "Retiree":

(a) means a person who:

(i) retired from a participating employer; and

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

(b) does not include a person:

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

(B) whose participating employer that reemployed the person under Subsection (4)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with Section 49-11-621 on or after July 1, 2010; or

(ii) who is working under a phased retirement agreement in accordance with Title 49, Chapter 11, Part 13, Phased Retirement.

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(5) "Retiree surcharge" means the board certified percent of a reemployed retiree's salary:

(a) paid on behalf of a reemployed retiree to the office;

(b) that is required to amortize the actuarial loss that would occur due to eligible retirees being authorized to:

(i) commence their benefits at an earlier age; and

(ii) return to the workforce with a participating employer; and

(c) set in accordance with policies established by the board upon the advice of the actuary.

Section 2. Section **49-11-1205** is amended to read:

49-11-1205. Postretirement reemployment restriction exceptions.

(1) (a) 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 (1)(a)(i), the retiree does not receive any employer paid benefits, including:

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

(B) medical benefits;

(C) dental benefits;

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

(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 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.

(b) Beginning January 1, 2013, the board shall adjust the amounts under Subsection (1)(a)(iii) by the annual change in the Consumer Price Index during the previous calendar year

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as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(2) A retiree shall be considered as having completed the one-year separation from employment with a participating employer required under Section 49-11-1204, 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 (2)(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 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 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.

(3) (a) 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:

(i) 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;

(ii) a length-of-service award;

(iii) 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

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

(b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax credits, vouchers, and payments to an affiliated emergency services worker may not exceed \$500 per month.

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(c) Beginning January 1, 2016, the board shall adjust the amount under Subsection (3)(b) 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.

(4) (a) 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) except as provided in Subsection (8), is reemployed by a participating employer that is a different participating employer than the participating employer the reemployed retiree was employed by at the time of retirement;

(C) is reemployed by a public education participating employer in a position as an educator as defined under Section ~~53A-6-103~~ 53E-6-102; and

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

(ii) the participating employer that reemploys the retiree pays to the office on behalf of the retiree:

(A) the amortization rate; and

(B) the retiree surcharge.

(b) Any contribution paid to the office under Subsection (4)(a)(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.

(c) The office shall, on or before November 30, 2024, study, evaluate, and report on the actuarial costs and effectiveness of implementing the educator retiree reemployment exception authorized under this Subsection (4) to the Retirement and Independent Entities Interim Committee of the Legislature.

(5) (a) (i) A retiree receiving a retirement allowance may be reemployed under the provisions of Subsections (1), (3), and (4) in only one position for only one participating employer at a time following the retiree's retirement date.

(ii) The participating employer shall notify the office which postretirement

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reemployment exception under this section will govern the retiree's reemployment.

(b) A retiree reemployed under the provisions of Subsection (1), (3), or (4) may change reemployment to a new position under the provisions of Subsection (1), (3), or (4) only if:

(i) the retiree ceases actual work and is terminated from the current reemployed position;

(ii) except as provided in Subsection (8), begins the subsequent reemployment with a participating employer that is a different participating employer than:

(A) the participating employer for the retiree's current reemployment; and

(B) the participating employer that employed the retiree at the retiree's original time of retirement; and

(iii) the participating employer or retiree notifies the office of the change in reemployment and provides evidence of the termination and change to the office.

~~[(4)]~~ (6) (a) If a retiree is reemployed under the provisions of Subsection (1) [or], (3), or (4), 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 separation requirement under Section 49-11-1204.

(b) If a retiree changes reemployment to another position under the provisions of Subsection (1), (3), or (4), the final termination date of all reemployment, as confirmed in writing by the last participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Subsection 49-11-505(3)(a).

~~[(b)]~~ (7) 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 (1)(a)(iii) or (3)(b).

(8) Notwithstanding Subsections (4)(a)(i)(B) and (5)(b)(ii), a reemployed retiree that was employed by:

(a) the State of Utah at the time of retirement may be reemployed by the state under Subsection (4) or (5) if the reemployment is with a different agency or office; or

(b) a participating employer located within a county of the fourth, fifth, or sixth class, as classified under Section 17-50-501, may be reemployed by that participating employer under Subsection (4) or (5) if before the retiree is reemployed:

(i) the participating employer certifies to the office, under penalty of fraud, the facts

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and circumstances of rehire, including any prearrangement for reemployment before the member's retirement date; and

(ii) the office performs a facts and circumstances review and determines there was a bona fide termination of employment with that participating employer, including the specific finding that there was not a prearrangement for reemployment before the member's retirement date.

(9) (a) In accordance with this Subsection (9), the board may modify the benefits provided to retirees reemployed under Subsection (4).

(b) A retiree entering into reemployment under Subsection (4) is subject to the modifications described in this Subsection (9).

(c) The annual cost-of-living adjustment under Section 49-12-407, 49-13-407, 49-14-403, 49-15-403, 49-16-403, 49-17-405, 49-18-403, 49-18-403, 49-22-308, or 49-23-307 may be adjusted for a retiree reemployed under the provisions of Subsection (4) if the report required under Subsection (4)(c) or another actuarial study commissioned by the board that conforms with generally accepted actuarial principles and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards Board concludes:

(i) the aggregate actuarial loss described under Subsection 49-11-1202(5)(b) resulting from the retiree reemployment exception authorized under Subsection (4) materially exceeds the funding from the retiree surcharge;

(ii) that actuarial loss could not reasonably be funded by an increase to the retiree surcharge by the board as authorized in Section 49-11-1202; and

(iii) contribution rate increases would be required to cover the liability of participating employers for the actuarial loss not funded by the retiree surcharge.

(d) If the conditions under Subsection (9)(c) are met, as determined by the board and certified by board action, the board shall direct the office how to offset that actuarial loss through modification of the annual cost-of-living adjustment of a retiree who has been reemployed under the provisions of Subsection (4), including determining:

(i) if the modification shall apply to all retirees who have been reemployed under the provisions of Subsection (4) or certain classes of those retirees;

(ii) the appropriate and necessary modifications for all those retirees or classes of those retirees, including reducing, suspending, or canceling the annual cost-of-living adjustment; and

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(iii) the duration of the modifications, which may be permanent or for fixed or indeterminate periods of time.

(e) A modification made under this Subsection (9) shall only apply after the board action and may not decrease an affected retiree's allowance or prior annual cost-of-living adjustments received.

Section 3. Section **49-11-1206** is amended to read:

49-11-1206. Notice of postretirement reemployment.

(1) A participating employer shall immediately notify the office:

(a) if the participating employer reemploys a retiree;

(b) whether the reemployment is subject to Section 49-11-1204 or Subsection 49-11-1205(1), (2), [~~or~~] (3), (4), or (5); and

(c) of any election by the retiree under Section 49-11-1204.

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

(3) A retiree subject to this part shall report to the office the status of the reemployment under Section 49-11-1204 or 49-11-1205.

(4) The retirement application form submitted to the office shall contain the retiring member's certification, under penalty of fraud, of whether there was a prearrangement of reemployment before the retiree's retirement date with the participating employer.

Section 4. Section **49-11-1207** is amended to read:

49-11-1207. Postretirement reemployment -- Violations -- Penalties.

(1) (a) If the office receives notice or learns of the reemployment of a retiree in violation of Section 49-11-1204 or 49-11-1205, the office shall:

(i) immediately cancel the retiree's retirement allowance;

(ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar year if the reemployment with a participating employer exceeded the limitation under Subsection 49-11-1205(1)(a)(iii)(A) or (3)(b); and

(iii) recover any overpayment resulting from the violation in accordance with the provisions of Section 49-11-607 before the allowance may be reinstated.

(b) Reinstatement of an allowance following cancellation for a violation under this section is subject to the procedures and provisions under Section 49-11-1204.

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(2) If a retiree or participating employer failed to report reemployment in violation of Section 49-11-1206, 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 violation.

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

(b) In addition to other penalties under this section, if the reemployment of a retiree is in violation of Subsection 49-11-1205(4), the participating employer shall pay the office any delinquent retiree surcharge and amortization rate contributions, plus interest, under Section 49-11-503.

(4) If a participating employer fails to notify the office in accordance with Section 49-11-1206, the participating employer is immediately subject to a compliance audit by the office.

Section 5. **Effective date.**

This bill takes effect on January 1, 2019.

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Legislative Review Note

Office of Legislative Research and General Counsel†