

Senator Jani Iwamoto proposes the following substitute bill:

POSTRETIREMENT REEMPLOYMENT REVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ 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 reemployment; and
 - is reemployed by a different participating employer than the participating employer that employed the retiree at the time of retirement 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;



- 26 ▶ specifies penalties for violating the reemployment provisions; and
- 27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **49-11-1202**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by
35 Coordination Clause, Laws of Utah 2016, Chapter 310

36 **49-11-1205**, as last amended by Laws of Utah 2017, Chapter 141

37 **49-11-1206**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by
38 Coordination Clause, Laws of Utah 2016, Chapter 310

39 **49-11-1207**, as last amended by Laws of Utah 2017, Chapter 141



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

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

43 **49-11-1202. Definitions.**

44 As used in this part:

45 (1) (a) "Affiliated emergency services worker" means a person who:

46 (i) is employed by a participating employer;

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

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

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

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

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

56 (b) "Affiliated emergency services worker" does not include a person who performs

57 work or service but does not meet the requirements of Subsection (1)(a).

58 (2) "Amortization rate" means the amortization rate, as defined in Section 49-11-102,
59 to be applied to the system that would have covered the retiree if the retiree's reemployed
60 position were deemed to be an eligible, full-time position within that system.

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

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

- 65 (i) listed as the contractor; or
- 66 (ii) an owner, partner, or principal of the contractor.

67 (4) "Retiree":

68 (a) means a person who:

- 69 (i) retired from a participating employer; and
- 70 (ii) begins reemployment on or after July 1, 2010, with a participating employer; and

71 (b) does not include a person:

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

73 (B) whose participating employer that reemployed the person under Subsection
74 (4)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with

75 Section 49-11-621 on or after July 1, 2010; or

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

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

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

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

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

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

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

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

88 **49-11-1205. Postretirement reemployment restriction exceptions.**

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

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

93 (ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree
94 does not receive any employer paid benefits, including:

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

96 (B) medical benefits;

97 (C) dental benefits;

98 (D) other insurance benefits except for workers' compensation as provided under Title
99 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease
100 Act, and withholdings required by federal or state law for social security, Medicare, and
101 unemployment insurance; or

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

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

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

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

111 (2) A retiree shall be considered as having completed the one-year separation from
112 employment with a participating employer required under Section [49-11-1204](#), if the retiree:

113 (a) before retiring:

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

116 (ii) and during the employment under Subsection (2)(a)(i), suffered a physical injury
117 resulting from external force or violence while performing the duties of the employment, and
118 for which injury the retiree would have been approved for total disability in accordance with

119 the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of
120 service are not considered;

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

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

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

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

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

133 (ii) a length-of-service award;

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

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

137 (b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax
138 credits, vouchers, and payments to an affiliated emergency services worker may not exceed
139 \$500 per month.

140 (c) Beginning January 1, 2016, the board shall adjust the amount under Subsection
141 (3)(b) by the annual change in the Consumer Price Index during the previous calendar year as
142 measured by a United States Bureau of Labor Statistics Consumer Price Index average as
143 determined by the board.

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

146 (i) the retiree:

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

149 (B) except as provided in Subsection (8), is reemployed by a participating employer

150 that is a different participating employer than the participating employer the reemployed retiree
151 was employed by at the time of retirement; and

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

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

156 (A) the amortization rate; and

157 (B) the retiree surcharge.

158 (b) Any contribution paid to the office under Subsection (4)(a)(ii) shall be applied to
159 the system that would have covered the retiree if the retiree's reemployed position were
160 considered to be an eligible, full-time position within that system.

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

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

168 (ii) The participating employer shall notify the office which postretirement
169 reemployment exception under this section will govern the retiree's reemployment.

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

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

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

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

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

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

181 ~~[(4)]~~ (6) (a) If a retiree is reemployed under the provisions of Subsection (1) ~~[or]~~ (3),
182 or (4), the termination date of the reemployment, as confirmed in writing by the participating
183 employer, is considered the retiree's retirement date for the purpose of calculating the
184 separation requirement under Section [49-11-1204](#).

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

189 ~~[(b)]~~ (7) The office shall cancel the retirement allowance of a retiree for the remainder
190 of the calendar year if the reemployment with a participating employer exceeds the limitation
191 under Subsection (1)(a)(iii) or (3)(b).

192 (8) (a) Notwithstanding Subsections (4)(a)(i)(B) and (5)(b)(ii) and subject to the
193 requirements in Subsection (3)(b), a reemployed retiree that was employed by:

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

196 (ii) a participating employer located within a county of the fourth, fifth, or sixth class,
197 as classified under Section [17-50-501](#), may be reemployed by that participating employer under
198 Subsection (4) or (5).

199 (b) A participating employer may only reemploy a retiree under Subsection (8)(a) if:

200 (i) the participating employer certifies to the office, under penalty of fraud, the facts
201 and circumstances of rehire, including any prearrangement for reemployment before the
202 member's retirement date; and

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

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

208 **49-11-1206. Notice of postretirement reemployment.**

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

210 (a) if the participating employer reemploys a retiree;

211 (b) whether the reemployment is subject to Section [49-11-1204](#) or Subsection

212 49-11-1205(1), (2), [or] (3), (4), or (5); and

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

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

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

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

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

222 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**

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

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

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

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

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

233 (2) If a retiree or participating employer failed to report reemployment in violation of
234 Section 49-11-1206, the retiree, participating employer, or both, who are found to be
235 responsible for the failure to report, are liable to the office for the amount of any overpayment
236 resulting from the violation.

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

239 (b) In addition to other penalties under this section, if the reemployment of a retiree is
240 in violation of Subsection 49-11-1205(4), the participating employer shall pay the office any
241 delinquent retiree surcharge and amortization rate contributions, plus interest, under Section
242 49-11-503.

243 (4) If a participating employer fails to notify the office in accordance with Section
244 [49-11-1206](#), the participating employer is immediately subject to a compliance audit by the
245 office.

246 Section 5. **Effective date.**

247 This bill takes effect on January 1, 2019.