

**Senator Jani Iwamoto** proposes the following substitute bill:

**POSTRETIREMENT REEMPLOYMENT REVISIONS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jani Iwamoto**

House Sponsor: Lee B. Perry

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**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 certain public safety service and firefighter service 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
  - 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



- 26 committee of the Legislature;
- 27       ▶ authorizes the board to modify the annual cost-of-living adjustment of certain
- 28 reemployed retirees in certain circumstances;
- 29       ▶ specifies penalties for violating the reemployment provisions; and
- 30       ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32       None

33 **Other Special Clauses:**

34       This bill provides a special effective date.

35 **Utah Code Sections Affected:**

36 AMENDS:

37       **49-11-1202**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by  
38 Coordination Clause, Laws of Utah 2016, Chapter 310

39       **49-11-1205**, as last amended by Laws of Utah 2017, Chapter 141

40       **49-11-1206**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by  
41 Coordination Clause, Laws of Utah 2016, Chapter 310

42       **49-11-1207**, as last amended by Laws of Utah 2017, Chapter 141



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

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

46       **49-11-1202. Definitions.**

47       As used in this part:

- 48       (1) (a) "Affiliated emergency services worker" means a person who:
  - 49           (i) is employed by a participating employer;
  - 50           (ii) performs emergency services for another participating employer that is a different
  - 51 agency;
  - 52           (iii) is trained in techniques and skills required for the emergency service;
  - 53           (iv) continues to receive regular training required for the service;
  - 54           (v) is on the rolls as a trained affiliated emergency services worker of the participating
  - 55 employer; and
  - 56           (vi) provides ongoing service for a participating employer, which service may include

57 service as a volunteer firefighter, reserve law enforcement officer, search and rescue worker,  
58 emergency medical technician, ambulance worker, park ranger, or public utilities worker.

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

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

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

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

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

70 (4) "Retiree":

71 (a) means a person who:

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

74 (b) does not include a person:

- 75 (i) (A) who was reemployed by a participating employer before July 1, 2010; and
- 76 (B) whose participating employer that reemployed the person under Subsection

77 (4)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with  
78 Section 49-11-621 on or after July 1, 2010; or

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

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

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

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

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

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

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

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

91 **49-11-1205. Postretirement reemployment restriction exceptions.**

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

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

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

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

99 (B) medical benefits;

100 (C) dental benefits;

101 (D) other insurance benefits except for workers' compensation as provided under Title  
102 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease  
103 Act, and withholdings required by federal or state law for social security, Medicare, and  
104 unemployment insurance; or

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

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

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

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

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

116 (a) before retiring:

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

119 (ii) and during the employment under Subsection (2)(a)(i), suffered a physical injury  
120 resulting from external force or violence while performing the duties of the employment, and  
121 for which injury the retiree would have been approved for total disability in accordance with  
122 the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of  
123 service are not considered;

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

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

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

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

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

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

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

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

140 (b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax  
141 credits, vouchers, and payments to an affiliated emergency services worker may not exceed  
142 \$500 per month.

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

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

149 (i) the retiree:

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

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

155 (C) is reemployed by a participating employer as a:

156 (I) public safety service employee as defined in Section [49-14-102](#), [49-15-102](#), or  
157 [49-23-102](#); or

158 (II) firefighter service employee as defined in Section [49-16-102](#) or [49-23-102](#); and

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

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

163 (A) the amortization rate; and

164 (B) the retiree surcharge.

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

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

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

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

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

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

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

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

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

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

188 ~~[(4)]~~ (6) (a) If a retiree is reemployed under the provisions of Subsection (1) [or], (3),  
189 or (4), the termination date of the reemployment, as confirmed in writing by the participating  
190 employer, is considered the retiree's retirement date for the purpose of calculating the  
191 separation requirement under Section 49-11-1204.

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

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

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

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

203 (ii) a participating employer located within a county of the fourth, fifth, or sixth class,  
204 as classified under Section 17-50-501, may be reemployed by that participating employer under  
205 Subsection (4) or (5).

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

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

210 (ii) the office performs a facts and circumstances review and determines there was a  
211 bona fide termination of employment with that participating employer, including the specific

212 finding that there was not a prearrangement for reemployment before the member's retirement  
213 date.

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

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

218 (c) The annual cost-of-living adjustment under Section [49-12-407](#), [49-13-407](#),  
219 [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](#)  
220 may be adjusted for a retiree reemployed under the provisions of Subsection (4) if the report  
221 required under Subsection (4)(c) or another actuarial study commissioned by the board that  
222 conforms with generally accepted actuarial principles and practices and with the Actuarial  
223 Standards of Practice issued by the Actuarial Standards Board concludes:

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

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

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

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

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

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

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

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



243 adjustments received.

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

245 **49-11-1206. Notice of postretirement reemployment.**

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

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

248 (b) whether the reemployment is subject to Section **49-11-1204** or Subsection

249 **49-11-1205**(1), (2), ~~(3)~~, (4), or (5); and

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

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

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

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

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

259 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**

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

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

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

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

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

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

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

276 (b) In addition to other penalties under this section, if the reemployment of a retiree is  
277 in violation of Subsection [49-11-1205](#)(4), the participating employer shall pay the office any  
278 delinquent retiree surcharge and amortization rate contributions, plus interest, under Section  
279 [49-11-503](#).

280 (4) If a participating employer fails to notify the office in accordance with Section  
281 [49-11-1206](#), the participating employer is immediately subject to a compliance audit by the  
282 office.

283 Section 5. **Effective date.**

284 This bill takes effect on January 1, 2019.