

**PUBLIC EDUCATION RETIREMENT AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: Lyle W. Hillyard

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to public education employees' retirement benefits.

**Highlighted Provisions:**

This bill:

▶ provides an exception to the limitation provisions for calculating the final average salary for members employed by a local education agency in the Public Employees' Contributory Retirement System, the Public Employees' Noncontributory Retirement System, and the New Public Employees' Tier II Contributory Retirement System;

▶ provides that the limitation for calculating the final average salary of a member employed by a local education agency may be exceeded if:

• the member has moved to a new position at the same local education agency due to a program need; or

• the percentage increase is due to a union-negotiated increase for a group of members that includes the member.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **49-12-102**, as last amended by Laws of Utah 2018, Chapter 415

30 **49-13-102**, as last amended by Laws of Utah 2018, Chapter 415

31 **49-22-102**, as last amended by Laws of Utah 2018, Chapter 415



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

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

35 **49-12-102. Definitions.**

36 As used in this chapter:

37 (1) "Benefits normally provided":

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

39 (i) a leave benefit of any kind;

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

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

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

46 (b) does not include:

47 (i) a payment for social security;

48 (ii) workers' compensation insurance;

49 (iii) unemployment insurance;

50 (iv) a payment for Medicare;

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

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

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

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

62 (i) bonuses;

63 (ii) cost-of-living adjustments;

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

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

69 (v) member contributions.

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

72 (c) "Compensation" does not include:

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

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

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

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

80 (v) any allowances or payments to a member for costs or expenses paid by the  
81 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
82 housing costs, insurance costs, equipment costs, and dependent care costs; or

83 (vi) a teacher salary bonus described in Section [53F-2-513](#).

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

86 (3) "Final average salary" means the amount calculated by averaging the highest five  
87 years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), (d),  
88 and (e).

89 (a) Except as provided in Subsection (3)(b), the percentage increase in annual

90 compensation in any one of the years used may not exceed the previous year's compensation by  
 91 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
 92 of the dollar during the previous year, as measured by a United States Bureau of Labor  
 93 Statistics Consumer Price Index average as determined by the board.

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

96 (i) the member has transferred from another agency; [or]

97 (ii) the member has been promoted to a new position[-]; or

98 (iii) for a member that is employed by a local education agency as defined in Section  
 99 [53E-1-102](#):

100 (A) the member has moved to a new position at the same local education agency due to  
 101 a program need that causes the member to become a ~~Ĥ~~→ [regular] ←~~Ĥ~~ full-time employee when  
 101a the  
 102 member was previously not a ~~Ĥ~~→ [regular] ←~~Ĥ~~ full-time employee; or

103 (B) the percentage increase is due to a ~~Ĥ~~→ [~~union-negotiated increase~~] **negotiated increase**  
 103a **through designated representatives under Subsection 34-20-9(1)(a)** ←~~Ĥ~~ for a group of  
 104 members that includes the member.

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

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

112 (e) The annual compensation used to calculate final average salary shall be based on:

113 (i) a calendar year for a member employed by a participating employer that is not an  
 114 educational institution; or

115 (ii) a contract year for a member employed by an educational institution.

116 (4) "Participating employer" means an employer which meets the participation  
 117 requirements of Sections [49-12-201](#) and [49-12-202](#).

118 (5) (a) "Regular full-time employee" means an employee whose term of employment  
 119 for a participating employer contemplates continued employment during a fiscal or calendar  
 120 year and whose employment normally requires an average of 20 hours or more per week,

121 except as modified by the board, and who receives benefits normally provided by the  
122 participating employer.

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

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

126 (ii) a classified school employee:

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

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

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

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

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

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

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

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

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

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

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

145 and

146 (D) whose employment hours are increased on or after July 1, 2013, to require an  
147 average of 20 hours per week or more for a participating employer; or

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

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

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

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

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

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

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

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

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

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

165 **49-13-102. Definitions.**

166 As used in this chapter:

167 (1) "Benefits normally provided" has the same meaning as defined in Section  
168 49-12-102.

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

172 (i) bonuses;

173 (ii) cost-of-living adjustments;

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

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

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

181 (c) "Compensation" does not include:

182 (i) the monetary value of remuneration paid in kind, including a residence or use of

183 equipment;

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

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

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

189 (v) any allowances or payments to a member for costs or expenses paid by the  
190 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
191 housing costs, insurance costs, equipment costs, and dependent care costs; or

192 (vi) a teacher salary bonus described in Section 53F-2-513.

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

195 (3) "Final average salary" means the amount calculated by averaging the highest three  
196 years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), and  
197 (d).

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

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

205 (i) the member has transferred from another agency; [or]

206 (ii) the member has been promoted to a new position[-]; or

207 (iii) for a member that is employed by a local education agency as defined in Section  
208 53E-1-102:

209 (A) the member has moved to a new position at the same local education agency due to  
210 a program need that causes the member to become a ~~Ĥ→~~ **[regular]** ~~←Ĥ~~ full-time employee when  
210a the

211 member previously was not a ~~Ĥ→~~ **[regular]** ~~←Ĥ~~ full-time employee; or

212 (B) the percentage increase is due to a ~~Ĥ→~~ **[union-negotiated increase]** **negotiated increase**  
212a **through designated representatives under Subsection 34-20-9(1)(a)** ~~←Ĥ~~ for a group of  
213 members that includes the member.

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

218 (d) The annual compensation used to calculate final average salary shall be based on:

219 (i) a calendar year for a member employed by a participating employer that is not an  
220 educational institution; or

221 (ii) a contract year for a member employed by an educational institution.

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

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

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

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

232 (ii) a classified school employee:

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

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

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

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

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

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

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



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

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

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

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

251 and

252 (D) whose employment hours are increased on or after July 1, 2013, to require an  
253 average of 20 hours per week or more for a participating employer; or

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

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

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

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

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

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

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

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

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

270 **49-22-102. Definitions.**

271 As used in this chapter:

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

273 49-12-102.

274 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total  
275 amount of payments made by a participating employer to a member of this system for services

276 rendered to the participating employer, including:

277 (i) bonuses;

278 (ii) cost-of-living adjustments;

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

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

284 (v) member contributions.

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

287 (c) "Compensation" does not include:

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

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

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

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

295 (v) any allowances or payments to a member for costs or expenses paid by the  
296 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
297 housing costs, insurance costs, equipment costs, and dependent care costs; or

298 (vi) a teacher salary bonus described in Section [53F-2-513](#).

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

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

303 (4) "Final average salary" means the amount calculated by averaging the highest five  
304 years of annual compensation preceding retirement subject to Subsections (4)(a), (b), (c), (d),  
305 and (e).

306 (a) Except as provided in Subsection (4)(b), the percentage increase in annual

307 compensation in any one of the years used may not exceed the previous year's compensation by  
 308 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
 309 of the dollar during the previous year, as measured by a United States Bureau of Labor  
 310 Statistics Consumer Price Index average as determined by the board.

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

313 (i) the member has transferred from another agency; [~~or~~]

314 (ii) the member has been promoted to a new position[-]; or

315 (iii) for a member that is employed by a local education agency as defined in Section  
 316 [53E-1-102](#):

317 (A) the member has moved to a new position at the same local education agency due to  
 318 a program need that causes the member to become a ~~H→~~ **[regular]** ~~←H~~ full-time employee when  
 318a the  
 319 member previously was not a ~~H→~~ **[regular]** ~~←H~~ full-time employee; or

320 (B) the percentage increase is due to a ~~H→~~ **[union-negotiated increase]** **negotiated increase**  
 320a **through designated representatives under Subsection 34-20-9(1)(a)** ~~←H~~ for a group of  
 321 members that includes the member.

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

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

329 (e) The annual compensation used to calculate final average salary shall be based on:

330 (i) a calendar year for a member employed by a participating employer that is not an  
 331 educational institution; or

332 (ii) a contract year for a member employed by an educational institution.

333 (5) "Participating employer" means an employer which meets the participation  
 334 requirements of:

335 (a) Sections [49-12-201](#) and [49-12-202](#);

336 (b) Sections [49-13-201](#) and [49-13-202](#);

337 (c) Section [49-19-201](#); or

338 (d) Section [49-22-201](#) or [49-22-202](#).

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

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

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

347 (ii) a classified school employee:

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

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

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

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

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

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

359 (vii) an individual who otherwise meets the definition of this Subsection (6) who  
360 performs services for a participating employer through a professional employer organization or  
361 similar arrangement.

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

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

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

365 (iii) a classified school employee:

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

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

369 participating employer; and  
370 (iv) a classified school employee:  
371 (A) who is hired before July 1, 2013;  
372 (B) who did not qualify as a regular full-time employee before July 1, 2013;  
373 (C) who does not receive benefits normally provided by the participating employer;  
374 [and]  
375 (D) whose employment hours are increased on or after July 1, 2013, to require an  
376 average of 20 hours per week or more for a participating employer; or  
377 (E) who is a person working on a contract:  
378 (I) for the purposes of vocational rehabilitation and the employment and training of  
379 people with significant disabilities; and  
380 (II) that has been set aside from procurement requirements by the state pursuant to  
381 Section [63G-6a-805](#) or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.  
382 (7) "System" means the New Public Employees' Tier II Contributory Retirement  
383 System created under this chapter.  
384 (8) "Years of service credit" means:  
385 (a) a period consisting of 12 full months as determined by the board;  
386 (b) a period determined by the board, whether consecutive or not, during which a  
387 regular full-time employee performed services for a participating employer, including any time  
388 the regular full-time employee was absent on a paid leave of absence granted by a participating  
389 employer or was absent in the service of the United States government on military duty as  
390 provided by this chapter; or  
391 (c) the regular school year consisting of not less than eight months of full-time service  
392 for a regular full-time employee of an educational institution.