

# HB0061S01 compared with HB0061

~~text~~ shows text that was in HB0061 but was deleted in HB0061S01.

text shows text that was not in HB0061 but was inserted into HB0061S01.

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Representative Kera Birkeland proposes the following substitute bill:

## POSTRETIREMENT REEMPLOYMENT AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kera Birkeland**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies the postretirement reemployment restrictions for a retiree who was a public safety service employee or a teacher.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides the circumstances under which a retiree who was a public safety service employee or a teacher immediately before retirement may be reemployed with a participating employer within the one-year separation period without cancellation of the retiree's retirement allowance; and
- ▶ makes technical and conforming changes.

#### Money Appropriated in this Bill:

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None

### Other Special Clauses:

~~{ This bill provides a special effective date. }~~ None

### Utah Code Sections Affected:

AMENDS:

**49-11-1202**, as last amended by Laws of Utah 2020, Chapter 449

**49-11-1205**, as last amended by Laws of Utah 2021, Chapter 193

**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

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*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;

(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.

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(3) "Part-time appointed or elected board member" means an individual who:

(a) serves in a position:

(i) as a member of a board, commission, council, committee, panel, or other body of a participating employer; and

(ii) that is designated in the participating employer's governing statute, charter, creation document, or similar document;

(b) is appointed or elected to the position for a definite and fixed term of office by official and duly recorded action of the participating employer;

(c) except for the service in the position, does not perform other work or service for compensation for the participating employer, whether as an employee or under a contract; and

(d) retires from a participating employer that is different than the participating employer with the position in which the person serves.

(4) "Qualifying retiree" means a retiree who:

(a) retires before July 1, 2022;

(~~f~~~~a~~)~~b~~) is, at the time of retirement, a public safety service employee as defined in Section 49-14-102 and retires from the system described in Chapter 14, Public Safety Contributory Retirement Act;

(~~f~~~~b~~)~~c~~) is, at the time of retirement, a public safety service employee as defined in Section 49-15-102 and retires from the system described in Chapter 15, Public Safety Noncontributory Retirement Act;

(~~f~~~~c~~)~~d~~) is, at the time of retirement, a public safety service employee as defined in Section 49-23-102 and retires from the system described in Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act; or

(~~f~~~~d~~)~~e~~) is, at the time of retirement, a teacher and retires from one of the following retirement systems:

(i) Chapter 12, Public Employees' Contributory Retirement Act;

(ii) Chapter 13, Public Employees' Noncontributory Retirement Act; or

(iii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

~~(4)~~ (5) (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

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employer if the retiree is:

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

~~[(5)]~~ (6) "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 ~~[(5)]~~

~~(6)(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.

(7) "Teacher" means an individual employed by a school district or charter school who is required to hold an educator license issued by the state board and who has an assignment to teach in a classroom.

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

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unemployment insurance; or

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

(iii) (A) the retiree [~~does not earn~~] earns, in any calendar year of reemployment an amount [~~in excess of~~] that is no more than 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) 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 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) 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, 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;

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

(v) is at least 50 years old; 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

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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.

(c) 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.

(d) A retiree is eligible for an exemption from the requirement to cease service without cancellation of a retirement allowance under this Subsection (3) only if the retiree, at the time of retirement, is at least:

(i) 50 years old, if the retiree is retiring from a public safety system or a firefighter system; or

(ii) 55 years old.

(4) (a) The office may not cancel the retirement allowance of a retiree employed as a part-time appointed or elected board member within one year after the retiree's retirement date if the part-time appointed or elected board member does not receive any compensation exceeding the amount described in this Subsection (4).

(b) A retiree who is a part-time appointed or elected board member for one or more boards, commissions, councils, committees, panels, or other bodies of participating employers:

(i) may receive an aggregate amount of compensation, remuneration, a stipend, or other benefit for service on a single or multiple boards, commissions, councils, committees, panels, or other bodies of no more than \$5,000 per year; and

(ii) may not receive an employer paid retirement service credit or retirement-related contribution.

(c) For purposes of Subsection (4)(b)(i):

(i) a part-time appointed or elected board member's compensation includes:

(A) an amount paid for the part-time appointed or elected board member's coverage in

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a group insurance plan provided by the participating employer; and

(B) the part-time appointed or elected board member's receipt of any other benefit provided by the participating employer; and

(ii) the part-time appointed or elected board member's compensation does not include:

(A) an amount the participating employer pays for employer-matching employment taxes, if the participating employer treats the part-time appointed or elected board member as an employee for federal tax purposes; or

(B) an amount that the part-time appointed or elected board member receives for per diem and travel expenses for up to 12 approved meetings or activities of the government board per year, if the per diem and travel expenses do not exceed the amounts established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 or by rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(d) The board shall adjust the amount under Subsection (4)(b)(i) 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.

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

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

(b) upon reemployment after the break in service under Subsection (5)(a), the qualifying retiree does not receive any employer paid benefits, including:

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

(ii) medical benefits;

(iii) dental benefits;

(iv) 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

(v) paid time off, including sick, annual, or other types of leave; and

(c) the qualifying retiree is reemployed under one of the following circumstances:

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(i) as a teacher who teaches less than half time during a school year;

(ii) as a firefighter service employee who works fewer than 1,040 hours of regularly scheduled firefighter service per year;

(iii) as a public safety service employee who works fewer than 1,040 hours of regularly scheduled public safety service per year; or

(iv) as an employee in any other position who works fewer than 20 hours per week.

~~(5)~~ (6) (a) If a retiree is reemployed under the provisions of Subsection (1) ~~[or]~~, (4), or (5), 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) 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 dollar limitation under Subsection (1)(a)(iii), (3)(b), or (4)(b) or the hour limitation under Subsection (5)(c).

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), 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.

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 dollar limitation under



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Subsection 49-11-1205(1)(a)(iii)(A) or (3)(b) or the hour limitation under Subsection (5)(c);  
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.

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

(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, 2023.~~

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