

Representative Mike Winder proposes the following substitute bill:

PUBLIC EMPLOYEES RETIREMENT AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Winder

Senate Sponsor: David G. Buxton

LONG TITLE

General Description:

This bill modifies the postretirement reemployment restrictions for public employees.

Highlighted Provisions:

This bill:

- ▶ creates an exception (the exception) to the separation period for retirees from a public employee system to be reemployed with a participating employer within the separation period without cancellation of the retirement allowance if the participating employer pays the amortization rate and a surcharge;
- ▶ requires the Utah State Retirement Office to report information regarding costs of the exception to the Retirement and Independent Entities Interim Committee; and
- ▶ creates a time-limited period for a current retiree from a public employee retirement system to be reemployed with a participating employer within the separation requirement without cancellation of the retirement allowance.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:



26 AMENDS:

27 [49-11-1202](#), as last amended by Laws of Utah 2020, Chapter 449

28 [49-11-1204](#), as last amended by Laws of Utah 2020, Chapter 24

29 [49-11-1205](#), as last amended by Laws of Utah 2021, Chapter 193

30 [49-11-1206](#), as enacted by Laws of Utah 2016, Chapter 310 and last amended by
31 Coordination Clause, Laws of Utah 2016, Chapter 310

32 ENACTS:

33 [49-11-1205.5](#), Utah Code Annotated 1953



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

36 Section 1. Section [49-11-1202](#) is amended to read:

37 **[49-11-1202. Definitions.](#)**

38 As used in this part:

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

40 (i) is employed by a participating employer;

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

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

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

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

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

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

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

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

56 (a) serves in a position:

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

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

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

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

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

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

69 (b) [~~Reemployment~~] "Reemployed," "reemploy," or "reemployment" includes work or
70 service performed on a contract for a participating employer if the retiree is:

71 (i) listed as the contractor; or

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

73 (5) "Retiree":

74 (a) means a person who:

75 (i) retired from a participating employer; and

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

77 (b) does not include a person:

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

79 (B) whose participating employer that reemployed the person under Subsection

80 (5)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with
81 Section [49-11-621](#) on or after July 1, 2010; or

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

84 (6) "Retiree surcharge" means the board certified percentage of a reemployed retiree's
85 salary:

86 (a) paid on behalf of a reemployed retiree;

87 (b) that is required to amortize the actuarial loss that would occur due to the

88 reemployed retiree being authorized to:

89 (i) commence receipt of a retirement allowance earlier than actuarially assumed

90 without using the exception in Subsection 49-11-1205(5); and

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

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

94 Section 2. Section **49-11-1204** is amended to read:

95 **49-11-1204. General restrictions -- Election following one-year separation --**

96 **Amortization rate.**

97 (1) A retiree may not for the same period of reemployment:

98 (a) (i) earn additional service credit; or

99 (ii) receive any retirement related contribution from a participating employer; and

100 (b) receive a retirement allowance.

101 (2) (a) Except as provided under Section 49-11-1205[5] or 49-11-1205.5, the office
102 shall cancel the retirement allowance of a retiree if the reemployment with a participating
103 employer begins within one year of the retiree's retirement date.

104 (b) If the office cancels the retiree's retirement allowance under Subsection (2)(a), the
105 retiree may be eligible to earn additional service credit in the reemployed position and receive
106 an allowance in accordance with Subsections (4)(a) and (5) and other provisions of this title.

107 (3) If a reemployed retiree, in accordance with Subsection (2)(a), is exempt from
108 having the allowance cancelled, including for completing the one-year separation from
109 employment with a participating employer, the retiree may elect to:

110 (a) cancel the retiree's retirement allowance and instead earn additional service credit in
111 the reemployed position and receive an allowance in accordance with Subsections (4)(a) and
112 (5) and other provisions of this title; or

113 (b) continue to receive the retiree's retirement allowance, forfeit earning additional
114 service credit, and forfeit any retirement-related contribution from the participating employer
115 that reemployed the retiree.

116 (4) (a) If a retiree's retirement allowance is cancelled and the retiree is eligible for
117 retirement coverage in a reemployed position, the office shall reinstate the retiree to active
118 member status on the first day of the month following the date of the employee's eligible

119 reemployment.

120 (b) Except as provided under Subsection (4)(c), if the retiree is not otherwise eligible
121 for retirement coverage in the reemployed position, the participating employer that reemploys
122 the retiree shall contribute the amortization rate to the office on behalf of the retiree.

123 (c) A participating employer that reemploys a retiree in accordance with Subsection
124 49-11-1205(1) is not required to contribute the amortization rate to the office.

125 (5) (a) For a retiree reinstated to active member status under Subsection (4)(a) who
126 retires within two years from the date of reemployment, the office:

127 (i) may not recalculate a retirement benefit for the retiree; and

128 (ii) shall resume the allowance that was being paid to the retiree at the time of the
129 cancellation.

130 (b) Subject to Subsection (1), for a retiree who is reinstated to active membership
131 under Subsection (4)(a) and retires two or more years after the date of reinstatement to active
132 membership, the office shall:

133 (i) resume the allowance that was being paid at the time of cancellation; and

134 (ii) calculate an additional allowance for the retiree based on the formula in effect at
135 the date of the subsequent retirement for all service credit accrued between the first and
136 subsequent retirement dates.

137 Section 3. Section 49-11-1205 is amended to read:

138 **49-11-1205. Postretirement reemployment restriction exceptions.**

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

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

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

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

146 (B) medical benefits;

147 (C) dental benefits;

148 (D) other insurance benefits except for workers' compensation as provided under Title
149 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease

150 Act, and withholdings required by federal or state law for social security, Medicare, and
151 unemployment insurance; or

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

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

156 (B) the retiree is reemployed as a judge as defined under Section 78A-11-102.

157 (b) The board shall adjust the amounts under Subsection (1)(a)(iii) by the annual change
158 in the Consumer Price Index during the previous calendar year as measured by a United States
159 Bureau of Labor Statistics Consumer Price Index average as determined by the board.

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

162 (a) before retiring:

163 (i) was employed with a participating employer as a public safety service employee as
164 defined in Section 49-14-102, 49-15-102, or 49-23-102;

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

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

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

176 (v) is at least 50 years old; and

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

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

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

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

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

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

187 (b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax
188 credits, vouchers, and payments to an affiliated emergency services worker may not exceed
189 \$500 per month.

190 (c) The board shall adjust the amount under Subsection (3)(b) by the annual change in
191 the Consumer Price Index during the previous calendar year as measured by a United States
192 Bureau of Labor Statistics Consumer Price Index average as determined by the board.

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

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

198 (ii) 55 years old.

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

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

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

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

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

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

212 (A) an amount paid for the part-time appointed or elected board member's coverage in
213 a group insurance plan provided by the participating employer; and

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

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

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

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

225 (d) The board shall adjust the amount under Subsection (4)(b)(i) by the annual change
226 in the Consumer Price Index during the previous calendar year as measured by a United States
227 Bureau of Labor Statistics Consumer Price Index average, as determined by the board.

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

230 (i) the retiree retires from one of the following retirement systems:

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

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

233 (C) Chapter 22, New Public Employees' Tier II Contributory Retirement Act;

234 (ii) the retiree has a bona fide termination from all participating employers and does
235 not have, before the retiree retires, a prearrangement that anticipates postretirement
236 reemployment with a participating employer;

237 (iii) the retiree is not reemployed by a participating employer for a period that is at least
238 60 days after the day on which the retiree retired;

239 (iv) the retiree is reemployed for a single participating employer;

240 (v) the retiree does not receive any employer paid retirement service credit or
241 retirement-related contributions; and

242 (vi) the participating employer that reemploys the retiree pays to the office, on behalf

243 of the retiree, the amortization rate and the retiree surcharge.

244 (b) The office shall apply the amortization rate and the retiree surcharge to the system
245 that would have covered the retiree if the retiree's reemployed position were considered to be
246 an eligible, full-time position within that system.

247 (c) Before October 1, 2028, the office shall study, evaluate, and report on the actuarial
248 costs and effectiveness of implementing the retiree reemployment exception authorized under
249 this Subsection (5) to the Retirement and Independent Entities Interim Committee.

250 ~~[(5)]~~ (6) (a) If a retiree is reemployed under the provisions of Subsection (1) [or], (4),
251 or (5), the termination date of the reemployment, as confirmed in writing by the participating
252 employer, is considered the retiree's retirement date for the purpose of calculating the
253 separation requirement under Section 49-11-1204.

254 (b) The office shall cancel the retirement allowance of a retiree for the remainder of the
255 calendar year if the reemployment with a participating employer exceeds the limitation under
256 Subsection (1)(a)(iii), (3)(b), or (4)(b).

257 Section 4. Section 49-11-1205.5 is enacted to read:

258 **49-11-1205.5. Limited window exception to postretirement reemployment**
259 **restriction.**

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

262 (a) the retiree retired before February 1, 2022, from one of the following retirement
263 systems:

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

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

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

267 (b) the retiree has a bona fide termination from all participating employers and does not
268 have, before the retiree retires, a prearrangement that anticipates postretirement reemployment
269 with a participating employer;

270 (c) the retiree is not reemployed by a participating employer for a period that is at least
271 60 days after the day on which the retiree retired; and

272 (d) the retiree does not receive any employer paid retirement service credit or
273 retirement-related contributions.

274 (2) A participating employer shall immediately notify the office if the participating
275 employer reemploys a retiree under this section.

276 (3) If a retiree is reemployed under this section, the termination date of the
277 reemployment, as confirmed in writing by the participating employer, is considered the retiree's
278 retirement date for the purpose of calculating the separation requirement under Section
279 49-11-1204.

280 Section 5. Section **49-11-1206** is amended to read:

281 **49-11-1206. Notice of postretirement reemployment.**

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

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

284 (b) whether the reemployment is subject to Section 49-11-1204 or Subsection
285 49-11-1205(1), (2), [or] (3), or (5); and

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

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

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

291 Section 6. **Effective date.**

292 (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2023.

293 (2) The changes to Section 49-11-1205.5 take effect on May 4, 2022.