

Representative Rich Cunningham proposes the following substitute bill:

POSTRETIREMENT EMPLOYMENT RESTRICTIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rich Cunningham

Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending postretirement reemployment provisions.

Highlighted Provisions:

This bill:

- ▶ for a certain period of time, 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 agency;
- ▶ requires a participating employer to pay the contribution rate for a reemployed retiree in certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256



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

30 Section 1. Section **49-11-505** is amended to read:

31 **49-11-505. Reemployment of a retiree -- Restrictions -- Penalties.**

32 (1) (a) For purposes of this section, "retiree":

33 (i) means a person who:

34 (A) retired from a participating employer; and

35 (B) begins reemployment on or after July 1, 2010, with a participating employer;

36 (ii) does not include a person:

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

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

39 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with

40 Section **49-11-621** after July 1, 2010; and

41 (iii) does not include a person who is reemployed as an active senior judge or an active

42 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by

43 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

44 (b) (i) This section does not apply to employment as an elected official if the elected
45 official's position is not full time as certified by the participating employer.

46 (ii) The provisions of this section apply to an elected official whose elected position is
47 full time as certified by the participating employer.

48 (c) (i) This section does not apply to employment as a part-time appointed board
49 member who does not receive any remuneration, stipend, or other benefit for the part-time
50 appointed board member's service.

51 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does
52 not include receipt of per diem and travel expenses up to the amounts established by the
53 Division of Finance in:

54 (A) Section **63A-3-106**;

55 (B) Section **63A-3-107**; and

56 (C) rules made by the Division of Finance according to Sections **63A-3-106** and

57 63A-3-107.

58 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
59 means a person who:

60 (A) is employed by a participating employer [~~and who~~];

61 (B) performs emergency services for another participating employer that is a different
62 agency [~~in which the person~~];

63 [~~(A)~~] (C) [~~has been~~] is trained in techniques and skills required for the service the
64 person provides to the participating employer;

65 [~~(B)~~] (D) continues to receive regular training required for the service;

66 [~~(C)~~] (E) is on the rolls as a trained affiliated emergency services worker of the
67 participating employer; and

68 [~~(D)~~] (F) provides ongoing service for a participating employer, which service may
69 include service as a volunteer firefighter, reserve law enforcement officer, search and rescue
70 personnel, emergency medical technician, ambulance personnel, park ranger, or public utilities
71 worker.

72 (ii) A person who performs work or service but does not meet the requirements of
73 Subsection (1)(d)(i) is not an affiliated emergency services worker for purposes of this
74 Subsection (1)(d).

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

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

80 (B) a length-of-service award;

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

83 (D) reimbursement of expenses incurred in the performance of duties.

84 (iv) For purposes of Subsections (1)(d)(iii)(A) and (B), the total amount of any
85 discounts, tax credits, vouchers, and payments to a volunteer may not exceed \$500 per month.

86 (v) Beginning January 1, 2016, the board shall adjust the amount under Subsection
87 (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year

88 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as
89 determined by the board.

90 (vi) The office shall cancel the retirement allowance of a retiree for the remainder of
91 the calendar year if employment as an affiliated emergency services worker with a participating
92 employer exceeds the limitation under Subsection (1)(d)(iv).

93 (vii) If a retiree is employed as an affiliated emergency services worker under the
94 provisions of Subsection (1)(d), the termination date of the employment as an affiliated
95 emergency services worker, as confirmed in writing by the participating employer, is
96 considered the retiree's retirement date for the purpose of calculating the separation
97 requirement under Subsection (3)(a).

98 (2) A retiree may not for the same period of reemployment:

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

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

101 (b) receive a retirement allowance.

102 (3) (a) Except as provided under Subsection (1)(d), (3)(b), (3)(d), or (10), the office
103 shall cancel the retirement allowance of a retiree if the reemployment with a participating
104 employer begins within one year of the retiree's retirement date.

105 (b) Until June 30, 2021, the office may not cancel the retirement allowance of a retiree
106 who is reemployed with a participating employer within one year of the retiree's retirement date
107 if:

108 (i) the retiree:

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

111 (B) is reemployed by a different agency; and

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

114 (ii) the participating employer pays the certified contribution rate to the office as if the
115 retiree's reemployed position were considered to be an eligible, full-time position within that
116 system but the retiree does not earn additional service credit or receive a retirement related
117 contribution.

118 (c) Any contribution paid to the office under Subsection (3)(b)(ii) shall be applied to

119 the system that would have covered the retiree if the retiree's reemployed position were
120 considered to be an eligible, full-time position within that system.

121 ~~[(b) The]~~ (d) Beginning on July 1, 2021, the office may not cancel the retirement
122 allowance of a retiree who is reemployed with a participating employer within one year of the
123 retiree's retirement date if:

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

126 (ii) upon reemployment after the break in service under Subsection (3)~~[(b)]~~(d)(i), the
127 retiree does not receive any employer provided benefits, including:

128 (A) medical benefits;

129 (B) dental benefits;

130 (C) other insurance benefits except for workers' compensation as provided under Title
131 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law
132 for Social Security, Medicare, and unemployment insurance; or

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

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

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

138 ~~[(e)]~~ (e) Beginning January 1, ~~[2013]~~ 2022, the board shall adjust the amounts under
139 Subsection (3)~~[(b)]~~(d)(iii)(A) by the annual change in the Consumer Price Index during the
140 previous calendar year as measured by a United States Bureau of Labor Statistics Consumer
141 Price Index average as determined by the board.

142 ~~[(d)]~~ (f) The office shall cancel the retirement allowance of a retiree for the remainder
143 of the calendar year if the reemployment with a participating employer exceeds the limitation
144 under Subsection (3)~~[(b)]~~(d)(iii)(A).

145 ~~[(e)]~~ (g) If a retiree is reemployed under the provisions of Subsection (3)(b) or (d)~~;~~
146 the termination date of the reemployment, as confirmed in writing by the participating
147 employer, is considered the retiree's retirement date for the purpose of calculating the
148 separation requirement under Subsection (3)(a).

149 ~~[(f) If a retiree received a retirement allowance in error, due to reemployment in~~

150 ~~violation of this section:]~~

151 ~~[(i) the office shall cancel the retiree's retirement allowance; and]~~

152 ~~[(ii) if the retiree applies for a future benefit, the office shall recover any overpayment~~
153 ~~in accordance with the provisions of Section [49-11-607](#).]~~

154 (4) If a reemployed retiree has completed the one-year separation from employment
155 with a participating employer required under Subsection (3)(a), the retiree may elect to:

156 (a) earn additional service credit in accordance with this title and cancel the retiree's
157 retirement allowance; or

158 (b) continue to receive the retiree's retirement allowance and forfeit any retirement
159 related contribution from the participating employer who reemployed the retiree.

160 (5) (a) As used in this Subsection (5), "amortization rate" means the amortization rate,
161 as defined in Section [49-11-102](#), to be applied to the system that would have covered the retiree
162 if the retiree's reemployed position were deemed to be an eligible, full-time position within that
163 system.

164 (b) A participating employer who reemploys a retiree shall contribute to the office the
165 amortization rate if the reemployed retiree:

166 (i) has completed the one-year separation from employment with a participating
167 employer required under Subsection (3)(a); and

168 (ii) makes an election under Subsection (4)(b) to continue to receive a retirement
169 allowance while reemployed.

170 (6) (a) A participating employer shall immediately notify the office:

171 (i) if the participating employer reemploys a retiree;

172 (ii) whether the reemployment is subject to Subsection (3)(b), (3)(d), or (4) of this
173 section; and

174 (iii) of any election by the retiree under Subsection (4).

175 (b) A participating employer shall certify to the office whether the position of an
176 elected official is or is not full time.

177 (c) A participating employer is liable to the office for a payment or failure to make a
178 payment in violation of this section.

179 (d) If a participating employer fails to notify the office in accordance with this section,
180 the participating employer is immediately subject to a compliance audit by the office.

181 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in
182 accordance with Subsection (7)(b) if the office receives notice or learns of:

- 183 (i) the reemployment of a retiree in violation of Subsection (1)(d) or (3); or
184 (ii) the election of a reemployed retiree under Subsection (4)(a).

185 (b) If the retiree is eligible for retirement coverage in the reemployed position, the
186 office shall cancel the allowance of a retiree who is subject to Subsection (7)(a), and reinstate
187 the retiree to active member status on the first day of the month following the date of:

- 188 (i) reemployment if the retiree is subject to Subsection (3); or
189 (ii) an election by an employee under Subsection (4)(a).

190 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
191 position:

- 192 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and
193 (ii) except as provided under Subsection (5)(c), the participating employer shall pay the
194 amortization rate to the office on behalf of the retiree.

195 (8) (a) [~~A~~] For a retiree subject to Subsection (7)(b) who retires within two years from
196 the date of reemployment, the office:

197 (i) [~~is not entitled to a recalculated~~] may not recalculate a retirement benefit for the
198 retiree; and

199 (ii) [~~with~~] shall resume the allowance that was being paid to the retiree at the time of
200 the cancellation.

201 (b) Subject to Subsection (2), for a retiree who is reinstated to active membership
202 under Subsection (7) and who retires two or more years after the date of reinstatement to active
203 membership, the office shall:

204 (i) resume [~~receiving~~] the allowance that was being paid at the time of cancellation;
205 and

206 (ii) [~~receive~~] calculate an additional allowance for the retiree based on the formula in
207 effect at the date of the subsequent retirement for all service credit accrued between the first
208 and subsequent retirement dates.

209 (9) (a) A retiree subject to this section shall report to the office the status of the
210 reemployment under Subsection (3) or (4).

211 (b) If the retiree fails to inform the office of an election under Subsection (4), the office

212 shall withhold one month's benefit for each month the retiree fails to inform the office under
213 Subsection (9)(a).

214 (10) A retiree shall be considered as having completed the one-year separation from
215 employment with a participating employer required under Subsection (3)(a), if the retiree:

216 (a) before retiring:

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

219 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury
220 resulting from external force or violence while performing the duties of the employment, and
221 for which injury the retiree would have been approved for total disability in accordance with
222 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if
223 years of service are not considered;

224 (iii) had less than 30 years of service credit but had sufficient service credit to retire,
225 with an unreduced allowance making the public safety service employee ineligible for
226 long-term disability payments under Title 49, Chapter 21, Public Employees' Long-Term
227 Disability Act, or a substantially similar long-term disability program; and

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

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

231 (11) If a retiree received a retirement allowance in error, due to reemployment in
232 violation of this section:

233 (a) the office shall cancel the retiree's retirement allowance;

234 (b) if the retiree applies for a future benefit, the office shall recover any overpayment in
235 accordance with the provisions of Section [49-11-607](#); and

236 (c) if a retiree or participating employer failed to report reemployment in violation of
237 this section, the retiree, participating employer, or both that are found to be responsible for the
238 failure to report are liable to the office for the amount of any overpayment resulting from the
239 violation.

240 ~~[(11)]~~ (12) The board may make rules to implement this section.