

Senator Jani Iwamoto proposes the following substitute bill:

EDUCATOR POSTRETIREMENT REEMPLOYMENT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill modifies the Postretirement Reemployment Restrictions Act by amending provisions relating to postretirement reemployment for educators.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ allows certain educator 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 committee of the Legislature;



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

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides a special effective date.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **49-11-1202**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by
37 Coordination Clause, Laws of Utah 2016, Chapter 310

38 **49-11-1205**, as last amended by Laws of Utah 2017, Chapter 141

39 **49-11-1206**, as enacted by Laws of Utah 2016, Chapter 310 and last amended by
40 Coordination Clause, Laws of Utah 2016, Chapter 310

41 **49-11-1207**, as last amended by Laws of Utah 2017, Chapter 141



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

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

45 **49-11-1202. Definitions.**

46 As used in this part:

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

48 (i) is employed by a participating employer;

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

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

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

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

55 (vi) provides ongoing service for a participating employer, which service may include
56 service as a volunteer firefighter, reserve law enforcement officer, search and rescue worker,

57 emergency medical technician, ambulance worker, park ranger, or public utilities worker.

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

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

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

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

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

69 (4) "Retiree":

70 (a) means a person who:

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

73 (b) does not include a person:

- 74 (i) (A) who was reemployed by a participating employer before July 1, 2010; and
- 75 (B) whose participating employer that reemployed the person under Subsection
76 (4)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with
77 Section 49-11-621 on or after July 1, 2010; or

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

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

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

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

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

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

87 (c) set in accordance with policies established by the board upon the advice of the

88 actuary.

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

90 **49-11-1205. Postretirement reemployment restriction exceptions.**

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

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

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

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

98 (B) medical benefits;

99 (C) dental benefits;

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

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

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

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

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

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

115 (a) before retiring:

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

118 (ii) and during the employment under Subsection (2)(a)(i), suffered a physical injury

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

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

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

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

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

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

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

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

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

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

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

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

148 (i) the retiree:

149 (A) is not reemployed by a participating employer for a period of at least 60 days from

150 the retiree's retirement date;

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

154 (C) is reemployed by a public education participating employer in a position as an
155 educator as defined under Section 53E-6-102; and

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

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

160 (A) the amortization rate; and

161 (B) the retiree surcharge.

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

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

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

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

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

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

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

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

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

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

185 [~~4~~] (6) (a) If a retiree is reemployed under the provisions of Subsection (1) [~~or~~]₂ (3),
186 or (4), the termination date of the reemployment, as confirmed in writing by the participating
187 employer, is considered the retiree's retirement date for the purpose of calculating the
188 separation requirement under Section [49-11-1204](#).

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

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

196 (8) Notwithstanding Subsections (4)(a)(i)(B) and (5)(b)(ii), a reemployed retiree that
197 was employed by:

198 (a) the State of Utah at the time of retirement may be reemployed by the state under
199 Subsection (4) or (5) if the reemployment is with a different agency or office; or

200 (b) a participating employer located within a county of the fourth, fifth, or sixth class,
201 as classified under Section [17-50-501](#), may be reemployed by that participating employer under
202 Subsection (4) or (5) if before the retiree is reemployed:

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

206 (ii) the office performs a facts and circumstances review and determines there was a
207 bona fide termination of employment with that participating employer, including the specific
208 finding that there was not a prearrangement for reemployment before the member's retirement
209 date.

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

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

214 (c) The annual cost-of-living adjustment under Section [49-12-407](#), [49-13-407](#),
215 [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](#)
216 may be adjusted for a retiree reemployed under the provisions of Subsection (4) if the report
217 required under Subsection (4)(c) or another actuarial study commissioned by the board that
218 conforms with generally accepted actuarial principles and practices and with the Actuarial
219 Standards of Practice issued by the Actuarial Standards Board concludes:

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

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

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

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

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

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

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

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

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

241 **49-11-1206. Notice of postretirement reemployment.**

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

- 243 (a) if the participating employer reemploys a retiree;
- 244 (b) whether the reemployment is subject to Section 49-11-1204 or Subsection
- 245 49-11-1205(1), (2), [or] (3), (4), or (5); and
- 246 (c) of any election by the retiree under Section 49-11-1204.
- 247 (2) A participating employer shall certify to the office whether the position of an
- 248 elected official is or is not full time.
- 249 (3) A retiree subject to this part shall report to the office the status of the reemployment
- 250 under Section 49-11-1204 or 49-11-1205.
- 251 (4) The retirement application form submitted to the office shall contain the retiring
- 252 member's certification, under penalty of fraud, of whether there was a prearrangement of
- 253 reemployment before the retiree's retirement date with the participating employer.
- 254 Section 4. Section 49-11-1207 is amended to read:
- 255 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**
- 256 (1) (a) If the office receives notice or learns of the reemployment of a retiree in
- 257 violation of Section 49-11-1204 or 49-11-1205, the office shall:
- 258 (i) immediately cancel the retiree's retirement allowance;
- 259 (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar
- 260 year if the reemployment with a participating employer exceeded the limitation under
- 261 Subsection 49-11-1205(1)(a)(iii)(A) or (3)(b); and
- 262 (iii) recover any overpayment resulting from the violation in accordance with the
- 263 provisions of Section 49-11-607 before the allowance may be reinstated.
- 264 (b) Reinstatement of an allowance following cancellation for a violation under this
- 265 section is subject to the procedures and provisions under Section 49-11-1204.
- 266 (2) If a retiree or participating employer failed to report reemployment in violation of
- 267 Section 49-11-1206, the retiree, participating employer, or both, who are found to be
- 268 responsible for the failure to report, are liable to the office for the amount of any overpayment
- 269 resulting from the violation.
- 270 (3) (a) A participating employer is liable to the office for a payment or failure to make
- 271 a payment in violation of this part.
- 272 (b) In addition to other penalties under this section, if the reemployment of a retiree is
- 273 in violation of Subsection 49-11-1205(4), the participating employer shall pay the office any

274 delinquent retiree surcharge and amortization rate contributions, plus interest, under Section
275 [49-11-503](#).

276 (4) If a participating employer fails to notify the office in accordance with Section
277 [49-11-1206](#), the participating employer is immediately subject to a compliance audit by the
278 office.

279 Section 5. **Effective date.**

280 This bill takes effect on January 1, 2019.