

PHASED RETIREMENT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Kraig Powell

LONG TITLE

Committee Note:

The Retirement and Independent Entities Interim Committee recommended this bill.

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by enacting phased retirement provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows a participating employer to participate in phased retirement for a retiree who has not completed the one-year employment separation requirement;
- ▶ requires a participating employer that offers phased retirement to establish written policies and enter into a written agreement with the retiree;
- ▶ provides for retiree eligibility for phased retirement and establishes restrictions;
- ▶ provides for participating employer and retiree reporting;
- ▶ provides penalties;
- ▶ allows the Legislature to make changes to the program;
- ▶ allows the Utah State Retirement Board to make related rules;
- ▶ provides for a sunset of the phased retirement provisions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256

34 ENACTS:

35 **49-11-1201**, Utah Code Annotated 1953

36 **49-11-1202**, Utah Code Annotated 1953

37 **49-11-1203**, Utah Code Annotated 1953

38 **49-11-1204**, Utah Code Annotated 1953

39 **49-11-1205**, Utah Code Annotated 1953

40 **49-11-1206**, Utah Code Annotated 1953

41 **49-11-1207**, Utah Code Annotated 1953

42 **49-11-1208**, Utah Code Annotated 1953

43 **63I-1-249**, Utah Code Annotated 1953



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

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

47 **49-11-505. Reemployment of a retiree -- Restrictions.**

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

49 (i) means a person who:

50 (A) retired from a participating employer; and

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

52 (ii) does not include a person:

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

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

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

56 Section **49-11-621** after July 1, 2010; [~~and~~]

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

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

59 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution[-]; and
60 (iv) does not include a person who is working under a phased retirement agreement in
61 accordance with Section [49-11-1201](#).

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

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

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

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

72 (A) Section [63A-3-106](#);

73 (B) Section [63A-3-107](#); and

74 (C) rules made by the Division of Finance according to Sections [63A-3-106](#) and
75 [63A-3-107](#).

76 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
77 means a person who is employed by a participating employer and who performs emergency
78 services for another participating employer that is a different agency in which the person:

79 (A) has been trained in techniques and skills required for the service the person
80 provides to the participating employer;

81 (B) continues to receive regular training required for the service;

82 (C) is on the rolls as a trained affiliated emergency services worker of the participating
83 employer; and

84 (D) provides ongoing service for a participating employer, which service may include
85 service as a volunteer firefighter, reserve law enforcement officer, search and rescue personnel,
86 emergency medical technician, ambulance personnel, park ranger, or public utilities worker.

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

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

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

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

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

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

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

101 (v) Beginning January 1, 2016, the board shall adjust the amount under Subsection
102 (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year
103 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as
104 determined by the board.

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

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

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

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

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

116 (b) receive a retirement allowance.

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

120 (b) The office may not cancel the retirement allowance of a retiree who is reemployed

121 with a participating employer within one year of the retiree's retirement date if:

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

124 (ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree
125 does not receive any employer provided benefits, including:

126 (A) medical benefits;

127 (B) dental benefits;

128 (C) other insurance benefits except for workers' compensation as provided under Title
129 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law
130 for Social Security, Medicare, and unemployment insurance; or

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

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

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

136 (c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection
137 (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar
138 year as measured by a United States Bureau of Labor Statistics Consumer Price Index average
139 as determined by the board.

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

143 (e) If a retiree is reemployed under the provisions of Subsection (3)(b), the termination
144 date of the reemployment, as confirmed in writing by the participating employer, is considered
145 the retiree's retirement date for the purpose of calculating the separation requirement under
146 Subsection (3)(a).

147 (f) If a retiree received a retirement allowance in error, due to reemployment in
148 violation of this section:

149 (i) the office shall cancel the retiree's retirement allowance; and

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

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

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

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

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

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

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

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

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

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

170 (ii) whether the reemployment is subject to Subsection (3)(b) or (4) of this section; and

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

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

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

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

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

180 (i) the reemployment of a retiree in violation of Subsection (3); or

181 (ii) the election of a reemployed retiree under Subsection (4)(a).

182 (b) If the retiree is eligible for retirement coverage in the reemployed position, the

183 office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the
184 retiree to active member status on the first day of the month following the date of:

- 185 (i) reemployment if the retiree is subject to Subsection (3); or
186 (ii) an election by an employee under Subsection (4)(a).
187 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
188 position:

- 189 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and
190 (ii) the participating employer shall pay the amortization rate to the office on behalf of
191 the retiree.

192 (8) (a) A retiree subject to Subsection (7)(b) who retires within two years from the date
193 of reemployment:

- 194 (i) is not entitled to a recalculated retirement benefit; and
195 (ii) will resume the allowance that was being paid at the time of cancellation.

196 (b) Subject to Subsection (2), a retiree who is reinstated to active membership under
197 Subsection (7) and who retires two or more years after the date of reinstatement to active
198 membership shall:

- 199 (i) resume receiving the allowance that was being paid at the time of cancellation; and
200 (ii) receive an additional allowance based on the formula in effect at the date of the
201 subsequent retirement for all service credit accrued between the first and subsequent retirement
202 dates.

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

205 (b) If the retiree fails to inform the office of an election under Subsection (4), the office
206 shall withhold one month's benefit for each month the retiree fails to inform the office under
207 Subsection (9)(a).

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

- 210 (a) before retiring:
211 (i) was employed with a participating employer as a public safety service employee as
212 defined in Section [49-14-102](#), [49-15-102](#), or [49-23-102](#);
213 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury

214 resulting from external force or violence while performing the duties of the employment, and
215 for which injury the retiree would have been approved for total disability in accordance with
216 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if
217 years of service are not considered;

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

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

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

225 (11) The board may make rules to implement this section.

226 Section 2. Section 49-11-1201 is enacted to read:

227 **Part 12. Phased Retirement**

228 **49-11-1201. Definitions.**

229 As used in this part:

230 (1) "Amortization rate" means the amortization rate, as defined in Section 49-11-102,
231 to be applied to the system that would have covered the retiree if the retiree's part-time position
232 were considered to be an eligible, full-time position within that system.

233 (2) "Full-time" means a:

234 (a) regular full-time employee whose term of employment for a participating employer
235 contemplates continued employment during a fiscal or calendar year and whose employment
236 normally requires an average of 40 hours or more per week and who receives benefits normally
237 provided by the participating employer;

238 (b) teacher whose term of employment for a participating employer contemplates
239 continued employment during a school year and who teaches full time;

240 (c) firefighter service employee whose employment normally requires an average of
241 2,080 hours of regularly scheduled firefighter service per year; and

242 (d) public safety service employee whose employment normally requires an average of
243 2,080 hours of regularly scheduled public safety service per year.

244 (3) "Half-time" means a:

245 (a) regular employee whose term of employment for a participating employer
 246 contemplates continued employment during a fiscal or calendar year and whose employment
 247 normally requires an average of 20 hours per week and who receives benefits normally
 248 provided by the participating employer;

249 (b) teacher whose term of employment for a participating employer contemplates
 250 continued employment during a school year and who teaches half time;

251 (c) firefighter service employee whose employment normally requires an average of
 252 1,040 hours of regularly scheduled firefighter service per year; and

253 (d) public safety service employee whose employment normally requires an average of
 254 1,040 hours of regularly scheduled public safety service per year.

255 (4) "Phased retirement" means continuing employment on a half-time basis of a retiree
 256 with the same participating employer ~~§~~→ **immediately** ←~~§~~ after the retiree's retirement date while
 256a the retiree receives
 257 a reduced retirement allowance.

258 Section 3. Section **49-11-1202** is enacted to read:

259 **49-11-1202. Phased retirement -- Voluntary participation -- Employer duties.**

260 A participating employer may elect to participate in phased retirement for a retiree who
 261 has not completed the one-year employment separation requirement under Section [49-11-505](#)
 262 under the conditions established under this part, if the participating employer:

263 (1) establishes written policies and procedures for phased retirement that shall include
 264 provisions for:

265 (a) granting and denying a request for phased retirement;

266 (b) needed approvals within the participating employer;

267 (c) time limits or other restrictions;

268 (d) identifying positions that may be included or excluded; and

269 (e) the elements of a written agreement described under Section [49-11-1204](#);

270 (2) enters into an agreement described under Section [49-11-1204](#);

271 (3) submits an application to the office for phased retirement on behalf of the parties of
 272 the agreement described under Section [49-11-1204](#); and

273 (4) complies with this part.

274 Section 4. Section **49-11-1203** is enacted to read:

275 **49-11-1203. Phased retirement -- Eligibility -- Restrictions -- Amortization rate.**

276 (1) A retiree is eligible for employment with only one position for only one
277 participating employer under phased retirement following the retiree's retirement date if:
278 (a) the retiree:
279 (i) is eligible to retire and retires in accordance with this title;
280 (ii) has been employed full time, for not less than four years immediately before the
281 retiree's retirement date;
282 (iii) completes and submits all required retirement forms to the office; and
283 (iv) completes and submits any phased retirement forms required by rules established
284 under Section 49-11-1207; and
285 (b) the retiree and the participating employer enter into an agreement described under
286 Section 49-11-1204.
287 (2) For the period of the phased retirement:
288 (a) the retiree receives 50% of the retiree's monthly allowance;
289 (b) the participating employer employs the retiree on a half-time basis;
290 (c) a participating employer that employs the retiree shall contribute to the office the
291 amortization rate;
292 (d) the retiree may not receive an annual cost-of-living adjustment to the retiree's
293 allowance;
294 (e) any death benefits payable to a surviving spouse or other beneficiary shall be paid
295 based on 100% of the retiree's retirement allowance;
296 (f) the retiree may not receive any employer provided retirement benefits, service credit
297 accruals, or any retirement related contributions from the participating employer; and
298 (g) except as specified under this section, a retiree working under phased retirement
299 shall be treated in the same manner as any other part-time employee working a similar position
300 and number of hours with the participating employer, including:
301 (i) any non-retirement related benefits;
302 (ii) leave benefits;
303 (iii) medical benefits; and
304 (iv) other benefits.
305 Section 5. Section 49-11-1204 is enacted to read:
306 **49-11-1204. Phased retirement agreements.**

307 (1) The participating employer and a willing and eligible retiree shall enter into a
308 written agreement to participate in phased retirement.

309 (2) The agreement shall specify the period of the phased retirement and, at the
310 discretion of the agreeing parties, address:

311 (a) hours of work;

312 (b) job duties; and

313 (c) other arrangements related to the employment.

314 Section 6. Section **49-11-1205** is enacted to read:

315 **49-11-1205. Reporting -- Penalties.**

316 (1) (a) A participating employer shall, within five business days, notify the office if the
317 participating employer enters a phased retirement agreement with a retiree.

318 (b) A participating employer shall report to the office any change in status of the
319 phased retirement in accordance with rules established under Section [49-11-1207](#).

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

322 (2) (a) A retiree who has entered into phased retirement agreement under this section
323 shall report to the office the phased retirement agreement in accordance with rules established
324 under Section [49-11-1207](#).

325 (b) If the retiree fails to report to the office as required under this section, the office
326 shall withhold one month's allowance for each month the retiree fails to make the report, in a
327 timely manner, required under Subsection (2)(a).

328 (3) If a retiree receives a retirement allowance or portion of a retirement allowance in
329 error or in violation of this part:

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

331 (b) the office shall recover any overpayment in accordance with Section [49-11-607](#).

332 (4) If a retiree or participating employer violates this part, including a failure to report
333 in accordance with this section, the retiree, participating employer, or both that are found to be
334 responsible for the violation are liable to the office for the amount of any allowance
335 overpayment, failure to make a required payment or contribution, or other amount needed to
336 correct an error or incorrect benefit resulting from the violation.

337 Section 7. Section **49-11-1206** is enacted to read:

338 **49-11-1206. Reset of one year separation.**

339 If a retiree is employed under phased retirement under this section, the termination date
 340 of the phased retirement employment, as confirmed in writing by the participating employer, is
 341 considered the retiree's retirement date for the purpose of calculating the separation
 342 requirement under Subsection [49-11-505\(3\)\(a\)](#).

343 Section 8. Section **49-11-1207** is enacted to read:

344 **49-11-1207. Phased retirement -- Adjustments or termination.**

345 (1) The Legislature may make adjustments to or terminate the phased retirement option
 346 created under this part, including:

347 (a) amending phased retirement eligibility, restrictions, scope, or duration provisions;

348 (b) closing phased retirement to additional retirees; or

349 (c) terminating phased retirement for all participating retirees.

350 (2) A participating employer and retiree enter into a phased retirement agreement
 351 subject to the adjustments or termination reserved in this section.

352 Section 9. Section **49-11-1208** is enacted to read:

353 **49-11-1208. Rulemaking.**

354 The board may make rules to implement this part.

355 Section 10. Section **63I-1-249** is enacted to read:

356 **63I-1-249. Repeal dates, Title 49.**

357 Title 49, Chapter 11, Part 12, Phased Retirement, is repealed $\hat{S} \rightarrow$ ~~July 1, 2021~~ January 1,
 357a 2022 $\leftarrow \hat{S}$.

358 Section 11. **Effective date.**

359 This bill takes effect on $\hat{S} \rightarrow$ ~~July 1, 2016.~~ January 1, 2017. $\leftarrow \hat{S}$