

PHASED RETIREMENT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Kraig Powell

LONG TITLE

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:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

30 AMENDS:

31 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256

32 ENACTS:

33 **49-11-1201**, Utah Code Annotated 1953

34 **49-11-1202**, Utah Code Annotated 1953

35 **49-11-1203**, Utah Code Annotated 1953

36 **49-11-1204**, Utah Code Annotated 1953

37 **49-11-1205**, Utah Code Annotated 1953

38 **49-11-1206**, Utah Code Annotated 1953

39 **49-11-1207**, Utah Code Annotated 1953

40 **49-11-1208**, Utah Code Annotated 1953

41 **63I-1-249**, Utah Code Annotated 1953



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

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

45 **49-11-505. Reemployment of a retiree -- Restrictions.**

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

47 (i) means a person who:

48 (A) retired from a participating employer; and

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

50 (ii) does not include a person:

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

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

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

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

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

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

57 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution[-]; and

58 (iv) does not include a person who is working under a phased retirement agreement in
59 accordance with Section 49-11-1201.

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

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

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

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

70 (A) Section 63A-3-106;

71 (B) Section 63A-3-107; and

72 (C) rules made by the Division of Finance according to Sections 63A-3-106 and
73 63A-3-107.

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

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

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

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

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

85 (ii) A person who performs work or service but does not meet the requirements of

86 Subsection (1)(d)(i) is not an affiliated emergency services worker for purposes of this
87 Subsection (1)(d).

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

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

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

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

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

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

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

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

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

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

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

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

114 (b) receive a retirement allowance.

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

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

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

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

124 (A) medical benefits;

125 (B) dental benefits;

126 (C) other insurance benefits except for workers' compensation as provided under Title
127 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law
128 for Social Security, Medicare, and unemployment insurance; or

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

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

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

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

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

141 (e) If a retiree is reemployed under the provisions of Subsection (3)(b), the termination

142 date of the reemployment, as confirmed in writing by the participating employer, is considered
143 the retiree's retirement date for the purpose of calculating the separation requirement under
144 Subsection (3)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

183 (i) reemployment if the retiree is subject to Subsection (3); or

184 (ii) an election by an employee under Subsection (4)(a).

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

187 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

188 (ii) the participating employer shall pay the amortization rate to the office on behalf of
189 the retiree.

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

192 (i) is not entitled to a recalculated retirement benefit; and

193 (ii) will resume the allowance that was being paid at the time of cancellation.

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

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

198 (ii) receive an additional allowance based on the formula in effect at the date of the
199 subsequent retirement for all service credit accrued between the first and subsequent retirement
200 dates.

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

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

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

208 (a) before retiring:

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

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

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

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

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

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

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

225 **Part 12. Phased Retirement**

226 **49-11-1201. Definitions.**

227 As used in this part:

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

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

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

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

238 (c) firefighter service employee whose employment normally requires an average of
239 2,080 hours of regularly scheduled firefighter service per year; and

240 (d) public safety service employee whose employment normally requires an average of
241 2,080 hours of regularly scheduled public safety service per year.

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

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

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

249 (c) firefighter service employee whose employment normally requires an average of
250 1,040 hours of regularly scheduled firefighter service per year; and

251 (d) public safety service employee whose employment normally requires an average of
252 1,040 hours of regularly scheduled public safety service per year.

253 (4) "Phased retirement" means continuing employment on a half-time basis of a retiree

254 with the same participating employer immediately after the retiree's retirement date while the
255 retiree receives a reduced retirement allowance.

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

257 **49-11-1202. Phased retirement -- Voluntary participation -- Employer duties.**

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

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

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

264 (b) needed approvals within the participating employer;

265 (c) time limits or other restrictions;

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

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

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

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

271 (4) complies with this part.

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

273 **49-11-1203. Phased retirement -- Eligibility -- Restrictions -- Amortization rate.**

274 (1) A retiree is eligible for employment with only one position for only one
275 participating employer under phased retirement following the retiree's retirement date if:

276 (a) the retiree:

277 (i) is eligible to retire and retires in accordance with this title;

278 (ii) has been employed full time, for not less than four years immediately before the
279 retiree's retirement date;

280 (iii) completes and submits all required retirement forms to the office; and

281 (iv) completes and submits any phased retirement forms required by rules established

282 under Section 49-11-1207; and

283 (b) the retiree and the participating employer enter into an agreement described under
284 Section 49-11-1204.

285 (2) For the period of the phased retirement:

286 (a) the retiree receives 50% of the retiree's monthly allowance;

287 (b) the participating employer employs the retiree on a half-time basis;

288 (c) a participating employer that employs the retiree shall contribute to the office the
289 amortization rate;

290 (d) the retiree may not receive an annual cost-of-living adjustment to the retiree's
291 allowance;

292 (e) any death benefits payable to a surviving spouse or other beneficiary shall be paid
293 based on 100% of the retiree's retirement allowance;

294 (f) the retiree may not receive any employer provided retirement benefits, service credit
295 accruals, or any retirement related contributions from the participating employer; and

296 (g) except as specified under this section, a retiree working under phased retirement
297 shall be treated in the same manner as any other part-time employee working a similar position
298 and number of hours with the participating employer, including:

299 (i) any non-retirement related benefits;

300 (ii) leave benefits;

301 (iii) medical benefits; and

302 (iv) other benefits.

303 Section 5. Section 49-11-1204 is enacted to read:

304 **49-11-1204. Phased retirement agreements.**

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

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

309 (a) hours of work;

310 (b) job duties; and

311 (c) other arrangements related to the employment.

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

313 **49-11-1205. Reporting -- Penalties.**

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

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

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

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

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

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

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

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

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

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

336 **49-11-1206. Reset of one year separation.**

337 If a retiree is employed under phased retirement under this section, the termination date

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

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

342 **49-11-1207. Phased retirement -- Adjustments or termination.**

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

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

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

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

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

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

351 **49-11-1208. Rulemaking.**

352 The board may make rules to implement this part.

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

354 **63I-1-249. Repeal dates, Title 49.**

355 Title 49, Chapter 11, Part 12, Phased Retirement, is repealed January 1, 2022.

356 Section 11. **Effective date.**

357 This bill takes effect on January 1, 2017.