

PUBLIC RETIREMENT WITHDRAWAL AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill modifies provisions of the Utah State Retirement and Insurance Benefit Act by providing the circumstances for a participating entity's withdrawal.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to withdrawal from participation in a Utah retirement system, including:
 - amending the definition of "withdrawing entity" to include a nonprofit organization;
 - providing the procedures for a withdrawing entity to make an election to withdraw; and
 - requiring the withdrawing entity to pay certain costs that arise out of the election to withdraw; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

[49-11-626](#), as enacted by Laws of Utah 2022, Chapter 205

[49-12-203](#), as last amended by Laws of Utah 2022, Chapter 205

30 49-13-203, as last amended by Laws of Utah 2022, Chapter 205

31 49-22-203, as last amended by Laws of Utah 2022, Chapter 205

32

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

34 Section 1. Section 49-11-626 is amended to read:

35 **49-11-626. Withdrawing entity -- Participation election date -- Withdrawal costs**
36 **-- Rulemaking.**

37 (1) As used in this section, "withdrawing entity" means an entity that:

38 (a) participates in a system or plan under this title before January 1, [2022] 2023; and

39 (b) (i) is a public employees' association; [or]

40 (ii) is an insurer that is subject to the disclosure requirements of Section 31A-4-113[-];

41 or

42 (iii) after beginning participation with a system or plan under this title, has modified

43 the entity's federal tax status to a nonprofit organization that qualified under Section 501(c)(3)

44 of the Internal Revenue Code.

45 (2) Notwithstanding any other provision of this title, a withdrawing entity may provide
46 for the participation of the withdrawing entity's employees with that system or plan as follows:

47 (a) the withdrawing entity shall determine a date that is no later than July 1, [2024]

48 2025, on which the withdrawing entity shall make an election and complete withdrawal under
49 Subsection (3);

50 (b) the withdrawing entity shall provide to the office notice of the withdrawing entity's
51 intent to enter into an agreement described in Subsection (2)(c);

52 (c) the withdrawing entity and the office may enter into an intent to withdraw
53 agreement to document a good faith arrangement to complete a withdrawal under this section;
54 and

55 (d) subject to Subsection (6), the withdrawing entity shall pay to the office any
56 reasonable actuarial and administrative costs determined by the office to have arisen out of an
57 election made under this section.

58 (3) The withdrawing entity may elect to:

59 (a) (i) continue the withdrawing entity's participation for all current employees of the
60 withdrawing entity, who are covered by a system or plan on the date set under Subsection
61 (2)(a); and

62 (ii) withdraw from participation in all systems and plans for all persons initially
63 entering employment with the withdrawing entity, beginning on the date set under Subsection
64 (2)(a); or

65 (b) withdraw from participation in all systems or plans for all current and future
66 employees of the withdrawing entity, beginning on the date set under Subsection (2)(a).

67 (4) (a) An election made under Subsection (3):

68 (i) shall be made on or before the date specified under Subsection (2)(a);

69 (ii) shall be documented by a resolution adopted by the governing body of the
70 withdrawing entity;

71 (iii) remains in effect unless and until the withdrawing entity again becomes a
72 participating employer with the office in accordance with Subsection (5); and

73 (iv) applies to the withdrawing entity as the employer and to all employees of the
74 withdrawing entity.

75 (b) Notwithstanding an election made under Subsection (3), any eligibility for service
76 credit earned by an employee under this title before the date specified under Subsection (2)(a)
77 is not affected by this section.

78 (c) Notwithstanding any other provision of this title, a withdrawing entity that makes
79 an election under Subsection (3) may provide or participate in any type of public or private
80 retirement for the withdrawing entity's employees after the withdrawal.

81 (5) After the withdrawal and subject to the laws and rules governing participating
82 employer admission, the withdrawing entity may elect, by resolution of the withdrawing
83 entity's governing body, to resume participation with the office and apply for admission as a
84 participating employer in a system or plan under this title.

85 (6) Before a withdrawing entity may withdraw under this section, the withdrawing

86 entity and the office shall enter into an agreement on:

87 (a) the costs described under Subsection (2)(d); and

88 (b) arrangements for the payment of the costs described under Subsection (2)(d).

89 Section 2. Section **49-12-203** is amended to read:

90 **49-12-203. Exclusions from membership in system.**

91 (1) The following employees are not eligible for service credit in this system:

92 (a) subject to the requirements of Subsection (2), an employee whose employment
93 status is temporary in nature due to the nature or the type of work to be performed;

94 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
95 education who participates in a retirement system with a public or private retirement system,
96 organization, or company designated by the Utah Board of Higher Education, or the technical
97 college board of trustees for an employee of each technical college, during any period in which
98 required contributions based on compensation have been paid on behalf of the employee by the
99 employer;

100 (c) an employee serving as an exchange employee from outside the state for an
101 employer who has not elected to make all of the employer's exchange employees eligible for
102 service credit in this system;

103 (d) an executive department head of the state, a member of the State Tax Commission,
104 the Public Service Commission, and a member of a full-time or part-time board or commission
105 who files a formal request for exemption;

106 (e) an employee of the Department of Workforce Services who is covered under
107 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

108 (f) an employee who is employed on or after July 1, 2009, with an employer that has
109 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection
110 [49-12-202\(2\)\(c\)](#);

111 (g) an employee who is employed on or after July 1, 2014, with an employer that has
112 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection
113 [49-12-202\(2\)\(d\)](#);

114 (h) an employee who is employed with a withdrawing entity that has elected under
115 Section 49-11-623, prior to January 1, 2017, to exclude:

116 (i) new employees from participation in this system under Subsection 49-11-623(3)(a);

117 or

118 (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);

119 (i) an employee described in Subsection (1)(i)(i) or (ii) who is employed with a
120 withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to
121 exclude:

122 (i) new employees from participation in this system under Subsection 49-11-624(3)(a);

123 or

124 (ii) all employees from participation in this system under Subsection 49-11-624(3)(b);

125 (j) an employee who is employed with a withdrawing entity that has elected under
126 Section 49-11-625, before July 1, 2022, to exclude all employees from participation in this
127 system; or

128 (k) an employee who is employed with a withdrawing entity that~~[-before July 1, 2024,]~~
129 elects under Section 49-11-626 to exclude:

130 (i) new employees from participation in this system under Subsection 49-11-626(3)(a);

131 or

132 (ii) all employees from participation in this system under Subsection 49-11-626(3)(b).

133 (2) If an employee whose status is temporary in nature due to the nature of type of
134 work to be performed:

135 (a) is employed for a term that exceeds six months and the employee otherwise
136 qualifies for service credit in this system, the participating employer shall report and certify to
137 the office that the employee is a regular full-time employee effective the beginning of the
138 seventh month of employment; or

139 (b) was previously terminated prior to being eligible for service credit in this system
140 and is reemployed within three months of termination by the same participating employer, the
141 participating employer shall report and certify that the member is a regular full-time employee

142 when the total of the periods of employment equals six months and the employee otherwise
143 qualifies for service credits in this system.

144 (3) (a) Upon cessation of the participating employer contributions, an employee under
145 Subsection (1)(b) is eligible for service credit in this system.

146 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service
147 credit earned by an employee under this chapter before July 1, 2009 is not affected under
148 Subsection (1)(f).

149 (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service
150 credit earned by an employee under this chapter before July 1, 2014, is not affected under
151 Subsection (1)(g).

152 (4) Upon filing a written request for exemption with the office, the following
153 employees shall be exempt from coverage under this system:

154 (a) a full-time student or the spouse of a full-time student and individuals employed in
155 a trainee relationship;

156 (b) an elected official;

157 (c) an executive department head of the state, a member of the State Tax Commission,
158 a member of the Public Service Commission, and a member of a full-time or part-time board or
159 commission;

160 (d) an employee of the Governor's Office of Planning and Budget;

161 (e) an employee of the Governor's Office of Economic Opportunity;

162 (f) an employee of the Commission on Criminal and Juvenile Justice;

163 (g) an employee of the Governor's Office;

164 (h) an employee of the Public Lands Policy Coordinating Office, created in Section
165 [63L-11-201](#);

166 (i) an employee of the State Auditor's Office;

167 (j) an employee of the State Treasurer's Office;

168 (k) any other member who is permitted to make an election under Section [49-11-406](#);

169 (l) a person appointed as a city manager or chief city administrator or another person

170 employed by a municipality, county, or other political subdivision, who is an at-will employee;

171 (m) an employee of an interlocal cooperative agency created under Title 11, Chapter
172 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided
173 through membership in a labor organization that provides retirement benefits to the
174 organization's members; and

175 (n) an employee serving as an exchange employee from outside the state for an
176 employer who has elected to make all of the employer's exchange employees eligible for
177 service credit in this system.

178 (5) (a) Each participating employer shall prepare and maintain a list designating those
179 positions eligible for exemption under Subsection (4).

180 (b) An employee may not be exempted unless the employee is employed in an
181 exempted position designated by the participating employer.

182 (6) (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a
183 municipality, county, or political subdivision may not exempt a total of more than 50 positions
184 or a number equal to 10% of the eligible employees of the municipality, county, or political
185 subdivision, whichever is less.

186 (b) A municipality, county, or political subdivision may exempt at least one regular
187 full-time employee.

188 (7) Each participating employer shall:

189 (a) maintain a list of employee exemptions; and

190 (b) update the employee exemptions in the event of any change.

191 (8) The office may make rules to implement this section.

192 (9) An employee's exclusion, exemption, participation, or election described in this
193 section:

194 (a) shall be made in accordance with this section; and

195 (b) is subject to requirements under federal law and rules made by the board.

196 Section 3. Section 49-13-203 is amended to read:

197 **49-13-203. Exclusions from membership in system.**

- 198 (1) The following employees are not eligible for service credit in this system:
- 199 (a) subject to the requirements of Subsection (2), an employee whose employment
200 status is temporary in nature due to the nature or the type of work to be performed;
- 201 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
202 education who participates in a retirement system with a public or private retirement system,
203 organization, or company designated by the Utah Board of Higher Education, or the technical
204 college board of trustees for an employee of each technical college, during any period in which
205 required contributions based on compensation have been paid on behalf of the employee by the
206 employer;
- 207 (c) an employee serving as an exchange employee from outside the state for an
208 employer who has not elected to make all of the employer's exchange employees eligible for
209 service credit in this system;
- 210 (d) an executive department head of the state or a legislative director, senior executive
211 employed by the governor's office, a member of the State Tax Commission, a member of the
212 Public Service Commission, and a member of a full-time or part-time board or commission
213 who files a formal request for exemption;
- 214 (e) an employee of the Department of Workforce Services who is covered under
215 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
- 216 (f) an employee who is employed with an employer that has elected to be excluded
217 from participation in this system under Subsection 49-13-202(5), effective on or after the date
218 of the employer's election under Subsection 49-13-202(5);
- 219 (g) an employee who is employed with a withdrawing entity that has elected under
220 Section 49-11-623, prior to January 1, 2017, to exclude:
- 221 (i) new employees from participation in this system under Subsection 49-11-623(3)(a);
222 or
- 223 (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);
- 224 (h) an employee described in Subsection (1)(h)(i) or (ii) who is employed with a
225 withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to

226 exclude:

227 (i) new employees from participation in this system under Subsection 49-11-624(3)(a);

228 or

229 (ii) all employees from participation in this system under Subsection 49-11-624(3)(b);

230 (i) an employee who is employed with a withdrawing entity that has elected under

231 Section 49-11-625, before July 1, 2022, to exclude all employees from participation in this

232 system; or

233 (j) an employee who is employed with a withdrawing entity that~~[, before July 1, 2024,]~~

234 elects under Section 49-11-626 to exclude:

235 (i) new employees from participation in this system under Subsection 49-11-626(3)(a);

236 or

237 (ii) all employees from participation in this system under Subsection 49-11-626(3)(b).

238 (2) If an employee whose status is temporary in nature due to the nature of type of

239 work to be performed:

240 (a) is employed for a term that exceeds six months and the employee otherwise

241 qualifies for service credit in this system, the participating employer shall report and certify to

242 the office that the employee is a regular full-time employee effective the beginning of the

243 seventh month of employment; or

244 (b) was previously terminated prior to being eligible for service credit in this system

245 and is reemployed within three months of termination by the same participating employer, the

246 participating employer shall report and certify that the member is a regular full-time employee

247 when the total of the periods of employment equals six months and the employee otherwise

248 qualifies for service credits in this system.

249 (3) (a) Upon cessation of the participating employer contributions, an employee under

250 Subsection (1)(b) is eligible for service credit in this system.

251 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service

252 credit earned by an employee under this chapter before the date of the election under

253 Subsection 49-13-202(5) is not affected under Subsection (1)(f).

- 254 (4) Upon filing a written request for exemption with the office, the following
255 employees shall be exempt from coverage under this system:
- 256 (a) a full-time student or the spouse of a full-time student and individuals employed in
257 a trainee relationship;
 - 258 (b) an elected official;
 - 259 (c) an executive department head of the state, a member of the State Tax Commission,
260 a member of the Public Service Commission, and a member of a full-time or part-time board or
261 commission;
 - 262 (d) an employee of the Governor's Office of Planning and Budget;
 - 263 (e) an employee of the Governor's Office of Economic Opportunity;
 - 264 (f) an employee of the Commission on Criminal and Juvenile Justice;
 - 265 (g) an employee of the Governor's Office;
 - 266 (h) an employee of the State Auditor's Office;
 - 267 (i) an employee of the State Treasurer's Office;
 - 268 (j) any other member who is permitted to make an election under Section 49-11-406;
 - 269 (k) a person appointed as a city manager or chief city administrator or another person
270 employed by a municipality, county, or other political subdivision, who is an at-will employee;
 - 271 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,
272 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
273 membership in a labor organization that provides retirement benefits to its members; and
 - 274 (m) an employee serving as an exchange employee from outside the state for an
275 employer who has elected to make all of the employer's exchange employees eligible for
276 service credit in this system.
- 277 (5) (a) Each participating employer shall prepare and maintain a list designating those
278 positions eligible for exemption under Subsection (4).
- 279 (b) An employee may not be exempted unless the employee is employed in a position
280 designated by the participating employer.
- 281 (6) (a) In accordance with this section, Section 49-12-203, and Section 49-22-205, a

282 municipality, county, or political subdivision may not exempt a total of more than 50 positions
283 or a number equal to 10% of the eligible employees of the municipality, county, or political
284 subdivision, whichever is less.

285 (b) A municipality, county, or political subdivision may exempt at least one regular
286 full-time employee.

287 (7) Each participating employer shall:

288 (a) maintain a list of employee exemptions; and

289 (b) update the employee exemptions in the event of any change.

290 (8) The office may make rules to implement this section.

291 (9) An employee's exclusion, exemption, participation, or election described in this
292 section:

293 (a) shall be made in accordance with this section; and

294 (b) is subject to requirements under federal law and rules made by the board.

295 Section 4. Section **49-22-203** is amended to read:

296 **49-22-203. Exclusions from membership in system.**

297 (1) The following employees are not eligible for service credit in this system:

298 (a) subject to the requirements of Subsection (2), an employee whose employment
299 status is temporary in nature due to the nature or the type of work to be performed;

300 (b) except as provided under Subsection (3), an employee of an institution of higher
301 education who participates in a retirement system with a public or private retirement system,
302 organization, or company designated by the Utah Board of Higher Education, or the technical
303 college board of trustees for an employee of each technical college, during any period in which
304 required contributions based on compensation have been paid on behalf of the employee by the
305 employer;

306 (c) an employee serving as an exchange employee from outside the state for an
307 employer who has not elected to make all of the employer's exchange employees eligible for
308 service credit in this system;

309 (d) an employee of the Department of Workforce Services who is covered under

310 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

311 (e) an employee who is employed with a withdrawing entity that has elected under
312 Section 49-11-623, prior to January 1, 2017, to exclude:

313 (i) new employees from participation in this system under Subsection 49-11-623(3)(a);

314 or

315 (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);

316 (f) a person who files a written request for exemption with the office under Section
317 49-22-205;

318 (g) an employee described in Subsection (1)(g)(i) or (ii) who is employed with a
319 withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to
320 exclude:

321 (i) new employees from participation in this system under Subsection 49-11-624(3)(a);

322 or

323 (ii) all employees from participation in this system under Subsection 49-11-624(3)(b);

324 (h) an employee who is employed with a withdrawing entity that has elected under
325 Section 49-11-625, before July 1, 2022, to exclude all employees from participation in this
326 system; or

327 (i) an employee who is employed with a withdrawing entity that~~[- before July 1, 2024,]~~
328 elects under Section 49-11-626 to exclude:

329 (i) new employees from participation in this system under Subsection 49-11-626(3)(a);

330 or

331 (ii) all employees from participation in this system under Subsection 49-11-626(3)(b).

332 (2) If an employee whose status is temporary in nature due to the nature of type of
333 work to be performed:

334 (a) is employed for a term that exceeds six months and the employee otherwise
335 qualifies for service credit in this system, the participating employer shall report and certify to
336 the office that the employee is a regular full-time employee effective the beginning of the
337 seventh month of employment; or

338 (b) was previously terminated prior to being eligible for service credit in this system
339 and is reemployed within three months of termination by the same participating employer, the
340 participating employer shall report and certify that the member is a regular full-time employee
341 when the total of the periods of employment equals six months and the employee otherwise
342 qualifies for service credits in this system.

343 (3) Upon cessation of the participating employer contributions, an employee under
344 Subsection (1)(b) is eligible for service credit in this system.

345 (4) An employee's exclusion, exemption, participation, or election described in this
346 section:

347 (a) shall be made in accordance with this section; and

348 (b) is subject to requirements under federal law and rules made by the board.