

**PUBLIC SAFETY AND FIREFIGHTER PLANNED
RETIREMENT PROGRAM**

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by enacting a planned retirement program.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ enacts a planned retirement program for certain public safety and firefighter employees;
- ▶ allows a participating employer to participate in a planned retirement program for certain public safety and firefighter retirees who have not completed the one-year employment separation requirement;
- ▶ requires a participating employer that offers a planned retirement program to establish written policies and enter into a written agreement with the retiree;
- ▶ provides for retiree eligibility for a planned retirement program 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;



- 28 ▶ requires the program to be in compliance with requirements for federally qualified
- 29 plans and provides for severability of provisions;
- 30 ▶ provides for a sunset of the planned retirement program provisions; and
- 31 ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill provides a special effective date.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **63I-1-249**, as last amended by Laws of Utah 2018, Chapter 357

39 ENACTS:

40 **49-11-1501**, Utah Code Annotated 1953

41 **49-11-1502**, Utah Code Annotated 1953

42 **49-11-1503**, Utah Code Annotated 1953

43 **49-11-1504**, Utah Code Annotated 1953

44 **49-11-1505**, Utah Code Annotated 1953

45 **49-11-1506**, Utah Code Annotated 1953

46 **49-11-1507**, Utah Code Annotated 1953

47 **49-11-1508**, Utah Code Annotated 1953

48 **49-11-1509**, Utah Code Annotated 1953

49 **49-11-1510**, Utah Code Annotated 1953



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

52 Section 1. Section **49-11-1501** is enacted to read:

53 **Part 15. Planned Retirement Program**

54 **49-11-1501. Definitions.**

55 As used in this part:

56 (1) "Amortization rate" means the amortization rate, as defined in Section **49-11-102**,

57 to be applied to the system that covered the retiree at the time of retirement.

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

59 (a) firefighter service employee whose employment normally requires an average of
60 2,080 hours of regularly scheduled firefighter service per year; and

61 (b) public safety service employee whose employment normally requires an average of
62 2,080 hours of regularly scheduled public safety service per year.

63 (3) "Firefighter service employee" means the same as that term is defined in Section
64 49-16-102 or 49-23-102.

65 (4) "Planned retirement program" means a program where:

66 (a) a member who is eligible to retire and begin receiving a retirement allowance from
67 an eligible retirement system makes an election to:

68 (i) continue active employment with the same participating employer following the
69 retiree's retirement date; and

70 (ii) not receive any direct retirement allowance payments during the time of
71 participation in the planned retirement program;

72 (b) the office contributes the retiree's monthly retirement allowance during the retiree's
73 participation in the planned retirement program to a deferred benefit account established on
74 behalf of the retiree; and

75 (c) the funds credited to the deferred benefit account are only available to the retiree
76 after the retiree terminates the planned retirement program employment.

77 (5) "Public safety service employee" means the same as that term is defined in Section
78 49-14-102, 49-15-102, or 49-23-102.

79 Section 2. Section **49-11-1502** is enacted to read:

80 **49-11-1502. Planned retirement program -- Voluntary employer participation --**
81 **Employer duties.**

82 (1) (a) A planned retirement program is created and offered to eligible members on a
83 voluntary basis as provided in this part.

84 (b) The planned retirement program is an alternative method of benefit accrual and
85 distribution in the following systems:

86 (i) Chapter 14, Public Safety Contributory Retirement Act;

87 (ii) Chapter 15, Public Safety Noncontributory Retirement Act;

88 (iii) Chapter 16, Firefighters' Retirement Act; and

89 (iv) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement

90 Act.

91 (2) A participating employer that employs a public safety service employee or
92 firefighter service employee may elect to participate in a planned retirement program for a
93 retiree who has not completed the one-year employment separation requirement described in
94 Section 49-11-1204 under the conditions established under this part, if the participating
95 employer:

96 (a) establishes written policies and procedures for a planned retirement program that
97 shall include provisions for:

98 (i) granting and denying a request for participating in the planned retirement program;

99 (ii) needed approvals within the participating employer;

100 (iii) additional time limits or other restrictions;

101 (iv) identifying positions that may be included or excluded; and

102 (v) the elements of a written agreement described under Section 49-11-1504;

103 (b) enters into an agreement described under Section 49-11-1504;

104 (c) submits an application to the office for participating in a planned retirement

105 program on behalf of the parties of the agreement described under Section 49-11-1504; and

106 (d) complies with this part.

107 Section 3. Section 49-11-1503 is enacted to read:

108 **49-11-1503. Planned retirement program -- Eligibility -- Restrictions --**

109 **Amortization rate.**

110 (1) All members of the retirement systems described in Subsection 49-11-1502(1)(b)
111 who retire on or after January 1, 2020, are eligible to enter a planned retirement program if they
112 meet all other requirements.

113 (2) A retiree is eligible for employment with only one position for only one
114 participating employer under a planned retirement program following the retiree's retirement
115 date if:

116 (a) the retiree:

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

118 (ii) has been employed full time as a public safety service employee or a firefighter
119 service employee, for not less than four years immediately before the retiree's retirement date;

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

121 (iv) prior to the retiree's retirement date, completes and submits all required planned
122 retirement program forms to the office; and

123 (b) the retiree and the participating employer enter into an agreement described under
124 Section 49-11-1504.

125 (3) (a) A member shall make a voluntary, irrevocable election to enter the planned
126 retirement program.

127 (b) A retiree who makes the election under Subsection (3)(a) begins the planned
128 retirement program employment after the retiree's retirement date, but that employment shall
129 terminate eight months after the retiree's retirement date.

130 (4) For the period of the planned retirement program participation:

131 (a) the retiree continues active employment as a public safety service employee or a
132 firefighter service employee with the same participating employer following the retiree's
133 retirement date;

134 (b) the participating employer employs the retiree on a full-time basis;

135 (c) the retiree does not receive any direct retirement allowance payments during the
136 time of participation in the planned retirement program;

137 (d) the office contributes the retiree's retirement allowance during the retiree's
138 participation in the planned retirement program to a deferred benefit account established on
139 behalf of the retiree in accordance with Section 49-11-1505;

140 (e) a participating employer that employs the retiree shall contribute to the office the
141 amortization rate;

142 (f) the retiree or an alternate payee may not receive an annual cost-of-living adjustment
143 to the retiree's or alternate payee's allowance;

144 (g) the retiree may not receive any employer provided retirement benefits, service
145 credit accruals, or any retirement related contributions from the participating employer; and

146 (h) except as specified under this part, a retiree working under a planned retirement
147 program agreement shall be treated in the same manner as any other employee working a
148 similar position and number of hours with the participating employer, including:

149 (i) any nonretirement related benefits;

150 (ii) leave benefits;

151 (iii) medical benefits; and

152 (iv) other benefits.

153 (5) If a retiree's employment is involuntarily terminated by the participating employer
154 during the planned retirement program employment period and the office receives written
155 notification that all employment with participating employers has been terminated, including
156 planned retirement program employment, the office shall:

157 (a) begin paying the retiree's retirement allowance to the retiree on the first day of the
158 month following the month in which the office receives the written notification of employment
159 termination; and

160 (b) distribute the total funds in the deferred benefit account on the retiree's behalf to the
161 retiree as provided in Section [49-11-1505](#).

162 (6) (a) If a retiree voluntarily terminates the planned retirement program employment
163 before completing the eight-month period and the office receives written notification that all
164 employment with participating employers has been terminated, including planned retirement
165 program employment, the office shall:

166 (i) begin paying the retiree's retirement allowance to the retiree on the first day of the
167 month following the month in which the office receives the written notification of employment
168 termination; and

169 (ii) forfeit the total funds in the deferred benefit account on the retiree's behalf.

170 (b) The amount under Subsection (6)(a)(ii) shall be forfeited as a penalty for the retiree
171 terminating the planned retirement program early.

172 (7) (a) If a retiree dies during the planned retirement program employment period, the
173 office shall pay the greater of:

174 (i) (A) the death benefits, if any, payable following and based on the retiree's
175 retirement; and

176 (B) a distribution of the total funds in the deferred benefit account on the retiree's
177 behalf to the retiree's designated beneficiary; or

178 (ii) the retiree's death benefits calculated as if the retiree had continued employment as
179 an active member of the system or plan that covered the retiree before the retiree's retirement.

180 (b) If the retiree's benefits are provided under Subsection (7)(a)(ii):

181 (i) the retiree's benefits are calculated as if the retiree had not retired and elected to
182 participate in the planned retirement program;

183 (ii) additional service credit shall be accrued based on the period of actual employment
184 in the planned retirement program;

185 (iii) the retiree's participating employer shall pay the required contributions and interest
186 related to the additional service credit to the office; and

187 (iv) the retiree's surviving spouse and beneficiaries forfeit all rights, claims, or interest
188 in the deferred benefit account that is established on the retiree's behalf.

189 (c) The office shall begin paying the death benefits under this Subsection (7) on the
190 first day of the month following the month in which the office receives written notification of
191 the death.

192 (8) (a) Except as provided in Subsection (8)(b), if a retiree becomes disabled during the
193 planned retirement program employment period, the office shall:

194 (i) begin paying the retiree's retirement allowance to the retiree on the first day of the
195 month following the month in which the office receives written notification that the retiree's
196 planned retirement program employment has been terminated; and

197 (ii) distribute the total funds in the deferred benefit account on the retiree's behalf to the
198 retiree.

199 (b) If a retiree becomes disabled during the planned retirement program employment
200 period and the disability is classified by the office as a line of duty disability pursuant to the
201 provisions of the system from which the retiree retired:

202 (i) the retiree forfeits all rights, claims, or interest in the deferred benefit account that is
203 established on the retiree's behalf; and

204 (ii) the retiree's benefits are calculated as if the retiree:

205 (A) had continued employment as an active member of the system or plan that covered
206 the retiree before the retiree's retirement; and

207 (B) had not retired and elected to participate in the planned retirement program created
208 by this part.

209 (9) A member who participates in a planned retirement program may not be eligible to
210 participate in a planned retirement program in the future.

211 Section 4. Section **49-11-1504** is enacted to read:

212 **49-11-1504. Planned retirement program agreement.**

213 (1) The participating employer and a willing and eligible retiree shall enter into a

214 written agreement to participate in a planned retirement program.

215 (2) Subject to the requirements in this part, the agreement shall specify the eight-month
216 period of the planned retirement program and, at the discretion of the agreeing parties, address:

217 (a) hours of work;

218 (b) job duties;

219 (c) waivers with respect to age and other discrimination in employment laws; and

220 (d) other arrangements related to the employment.

221 (3) A planned retirement agreement may not authorize employment under a planned
222 retirement agreement that exceeds eight months.

223 Section 5. Section **49-11-1505** is enacted to read:

224 **49-11-1505. Deferred benefit account -- No additional contributions.**

225 (1) The office shall establish a record keeping deferred benefit account for a retiree that
226 is participating in a planned retirement program.

227 (2) The office shall credit the amount of the retiree's monthly retirement allowance
228 during the retiree's participation in the planned retirement program to a deferred benefit
229 account established on behalf of the retiree in accordance with this section.

230 (3) Funds in the deferred benefit account do not earn interest and may not be credited
231 with interest or other investment earnings.

232 (4) Member or employer contributions may not be made to the deferred benefit account
233 in addition to the retirement allowance amounts credited to the account by the office.

234 (5) (a) The office shall distribute funds in the deferred benefit account in accordance
235 with the requirements of this part.

236 (b) The form of payment from the deferred benefit account shall be a lump sum
237 distribution.

238 (c) A member may elect a direct rollover of funds from the deferred benefit account to
239 an eligible retirement plan if in compliance with applicable federal laws and regulations
240 relating to the rollover of benefits.

241 (6) (a) A planned retirement program participant does not have a claim on the assets of
242 a retirement system with respect to the retiree's deferred benefit account, nor shall there be any
243 funds set aside for any planned retirement program participant that are separate from all other
244 retirement system funds.

245 (b) Funds in the deferred benefit account may be subject to a domestic relations order
246 and shall be divided when payable as provided in Section [49-11-612](#).

247 (c) Until the office receives written notification that all employment with participating
248 employers has been actually terminated, including planned retirement program employment,
249 money may not be paid from the deferred benefit account.

250 (7) The office shall pay the retiree's retirement allowance on the first day of the month
251 following the month in which the office receives written notification and any required
252 supporting documentation that the retiree's planned retirement program employment has been
253 irrevocably terminated.

254 (8) Subject to Sections [49-11-609](#) and [49-11-610](#), a retiree who elects to participate in
255 a planned retirement program may designate a beneficiary for the deferred benefit account.

256 (9) Any funds in a deferred benefit account that has been waived or forfeited as
257 provided in this part shall become funds of the system from which the retiree retired.

258 Section 6. Section **49-11-1506** is enacted to read:

259 **49-11-1506. Reporting -- Penalties.**

260 (1) (a) A participating employer shall, within five business days, notify the office if the
261 participating employer enters a planned retirement program participation agreement with a
262 qualifying retiree.

263 (b) A participating employer shall report to the office any change in status of the
264 planned retirement program employment in accordance with rules established under Section
265 [49-11-1509](#).

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

268 (2) (a) A retiree who has entered into planned retirement program participation
269 agreement under this section shall report to the office the planned retirement program
270 participation agreement in accordance with rules established under Section [49-11-1509](#).

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

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

- 276 (a) the office shall cancel the retiree's retirement allowance; and
277 (b) the office shall recover any overpayment in accordance with Section [49-11-607](#).
278 (4) If a retiree or participating employer violates this part, including a failure to report
279 in accordance with this section, the retiree, participating employer, or both that are found to be
280 responsible for the violation are liable to the office for the amount of any allowance
281 overpayment, failure to make a required payment or contribution, or other amount needed to
282 correct an error or incorrect benefit resulting from the violation.

283 Section 7. Section **49-11-1507** is enacted to read:

284 **49-11-1507. Reset of one year separation.**

285 If a retiree is employed under a planned retirement program under this section, the
286 termination date of the planned retirement program employment, as confirmed in writing by the
287 participating employer, is considered the retiree's retirement date for the purpose of calculating
288 the separation requirement under Subsection [49-11-1204](#)(2).

289 Section 8. Section **49-11-1508** is enacted to read:

290 **49-11-1508. Planned retirement program -- Compliance with requirements for**
291 **federally qualified plans -- Adjustments or termination -- Severability of provisions.**

292 (1) It is intended that the planned retirement program created under this part shall be
293 administered:

294 (a) as a program with deferred retirement option plan (DROP) features that do not
295 jeopardize the tax qualified status of the retirement systems described in Subsection
296 [49-11-1502](#)(1)(b) under the provisions of the Internal Revenue Code and the rules and
297 regulations of the Internal Revenue Service; and

298 (b) on a financially and actuarially sound basis that is within the funding planned for
299 the program.

300 (2) The Legislature may make adjustments to or terminate the planned retirement
301 program created under this part, including:

302 (a) amending planned retirement program eligibility, restrictions, scope, or duration
303 provisions;

304 (b) closing the planned retirement program to additional retirees; or

305 (c) terminating the planned retirement program for all participating retirees.

306 (3) (a) Participation in the program and benefits provided pursuant to this part are

307 subject to the requirements of the Internal Revenue Code and applicable federal laws and
308 regulations.

309 (b) If a provision of this part or the application of any provision of this part to any
310 person or circumstance is held invalid or found by the board to be in conflict with federal
311 requirements, which are a condition precedent to the creation of this program:

312 (i) the conflicting provision of this part shall be inoperative to the extent of the conflict,
313 and if the invalidity does not affect the operation of the remainder of this part; and

314 (ii) the remainder of this part shall still be regarded as having the force and effect of
315 law.

316 (c) The board or office may take actions necessary to protect the tax qualified status of
317 the systems, plans, and programs under its control, including suspending the right of members
318 to enter the planned retirement program, modify the program for future participants, or to
319 terminate the planned retirement program for all participating employers and retirees.

320 (4) A participating employer and retiree enter into a planned retirement program
321 agreement subject to the adjustments or termination reserved in this section.

322 Section 9. Section **49-11-1509** is enacted to read:

323 **49-11-1509. Rulemaking.**

324 The office shall, on or before November 30, 2025, study, evaluate, and report to the
325 Retirement and Independent Entities Interim Committee on the actuarial costs of implementing
326 the retiree reemployment exception authorized under this part and its effectiveness to meet
327 program goals.

328 Section 10. Section **49-11-1510** is enacted to read:

329 **49-11-1510. Rulemaking.**

330 The board may make rules to implement this part.

331 Section 11. Section **63I-1-249** is amended to read:

332 **63I-1-249. Repeal dates, Title 49.**

333 (1) Title 49, Chapter 11, Part 13, Phased Retirement, is repealed January 1, 2022.

334 (2) Title 49, Chapter 11, Part 15, Planned Retirement Program, is repealed January 1,
335 2027.

336 [~~2~~] (3) Section **49-20-418** is repealed January 1, 2022.

337 Section 12. **Effective date.**

338

This bill takes effect on January 1, 2020.