

Testimony before the House State Administration Committee
in Support of House Bill 213
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January 27, 2005

House Bill 213 is introduced at the request of the Public Employees' Retirement Board, which supports its provisions, with the exception of a necessary amendment to the provisions affecting the Judges' Retirement System. The amendment, also requested by the Board, deletes sections 39, 40 and 42 of the bill and inserts a new amendment to Montana Code Annotated Section 19-5-902.

Before I discuss the amendments I want to discuss the basic bill. HB213 is a general revision/housekeeping bill. Throughout each biennium, the Public Employees' Retirement Board and their staff keep track of issues that might need clarification, provisions that can be made easier to implement, and changes that need to be made to comply with the law (particularly federal law, specifically tax law, so the retirement plans retain their status as tax qualified plans). HB213 contains changes the Board considers necessary and appropriate in the administration of the retirement systems.

You have before you a table that provides a section-by-section summary of the changes. Most of the amendments can also be grouped to understand their impact.

➤ **Some amendments are necessary for compliance with federal tax law.**

- For example, Sections 11 and 18 (pp. 17 and 25), which clarify the relationship between collective bargaining unit multiemployer qualified pension plans and PERS, 26, 52, 56 (federal minimum distribution considerations in 10 and 20 year certain benefits), 73 (use of federal tax law terminology), 74 (expand deferred compensation participant rights as allowed by tax law).

➤ **Many of the amendments clarified the status of retirement system members.**

- Members can be active (generally, employed), retired (generally, receiving a retirement benefit) or inactive (generally, not employed but not receiving a benefit). The precision with which the terms are defined and applied is important not only to determine member rights, but also to comply with federal tax laws.
- Key to determining a member's status are definitions of the phrases "termination of employment" and "termination of service" (each has a number of equivalent phrases that are listed in the amendments).
 - "termination of employment" is technically defined, but means as you would expect, the end of the employment relationship
 - "termination of service" is a key concept for retirement benefit eligibility that requires the employment to be terminated for at least 30 days and complete payout of all forms of compensation (except legal action remedies)
- Members who have at least 5 years of membership service are also called vested members.

- Some affected sections: 1, 2, 3, 6(1)(b), 9, 17, 21, 23, 24, 28, 31, 34, 35, 43, 47, 48, 53, 57, 61, 62, 63, 64, 65, 66, 68, 69
- **Some amendments simply clarify current application and understanding or wording, to be more easily understood in the future.**
- For example, section 4 where duplicate service credit and membership service are not allowed. The language had said duplicate service couldn't be received for the same period of service. However, that was never the intent and never the effect as applied. If a person is employed in the morning for one covered employment and in the evening for another covered employment, there is no reason that person shouldn't receive credit for both employments, even though they are in the same day, or same period. More properly, and as amended, the prohibition is against receiving credit in two retirement systems for the same work, or the same service.
 - Some affected sections: 5 (utilizing a defined term "additional contributions"), 18 (clarifying "highest average compensation", used in benefit calculation, if the member doesn't have 36 consecutive months of membership service), 15 (using defined terms), clarify state contribution for local employees, 20 (payment requirements for purchase of service), 23 (clarify that once retirees begin receiving another benefit they can't apply for a disability benefit), 25 (internal consistency of terms), 26, 52, 56 (specify application of ten and twenty year certain benefits allowed by board practice, consistent with federal law), 30 and 32 (clarify amounts transferred to PERS member accounts in the defined contribution plan – responds to legislative auditor concern).
- **Some amendments contain commonsense corrections to existing statutes.**
- For example, section 6 (pp. 10-12), subsection 1 includes state employed firefighters in the state employee reduction in force statutes, a correction made necessary by the inclusion for the first time last session of some state employed firefighters in the Firefighters' Unified Retirement System. That same section, subsection (6) amends the re-employment restriction to be the same for all retirement systems, rather than more lenient for PERS only.
 - Some affected sections: 9(2), correcting a 2003 mistake by adding back the word "service" retirement because disability retirement benefits start immediately on termination of employment, 22 (internal statutory cite corrected), 38 (corrects coordination error from 2003 session), 70 (eliminates Insurance Service Office rating requirement that actually would penalize better volunteer fire service companies), 71 (eliminates reference to Chapter 2 of Title 19, which doesn't apply to Chapter 17, VFCA).
- **Some amendments are useful for proper administration of the retirement systems.**
- For example, section 7 (p. 12) contains clarifications of the Board's authority to correct errors in service purchases and benefit payments.
 - Some affected sections: 8 and 10 (allowing divorced spouse accounts in the defined contribution plan), 12 (clarifying the retirement education program), 13 (clarifying and simplify procedure for local government that contract for PERS coverage), 14, 36, 37, 44, 45, 49, 50, 54, 55, 58, 59, 67 (use uniform terms for member and employer contributions),

19 (clarify language, improve procedure for optional membership elections), 27 (delete legislative suggestions for specific rules made obsolete by federal law or alternative procedures – addresses a legislative auditor comment), 33 (proper use of terms for proper calculation of impact of DCRP), 46, 51 and 60 (utilize procedure established 19-2-803), 72 (tightens deadline for submission of local police retirement fund data, to coordinate with city fiscal year and PER Board financial report requirements), 75 and 76 (coordinate Highway Patrol statutes with Highway Patrol Officers' Retirement System for compliance with HPORS disability provisions).

The Proposed Amendment to the Bill:

The proposed amendment contains one drafting technical correction.

The major thrust of the amendment is to delete sections 39, 40 and 42 of the bill and insert an amendment to Section 19-5-902, MCA. All these sections concern the Judges' Retirement System. The change is for the purpose of providing a constitutional correction for an error made in the administration of an election allowed by the 2001 legislature.

Prior to 2001, nearly all judges received a benefit that was calculated on the basis of their final compensation and received a benefit increase each year that was based on the increases in the salary of sitting judges (if any). In 2001, the legislature gave judges receiving those benefits the option of electing to receive their benefit increases at a guaranteed rate of 3% each year. These particular judges got an election because it was unclear whether the old benefit structure was better than the new benefit structure.

The election forms that were given the judges in 2001 said that if they chose the 3% guaranteed benefit increase each year, their initial benefit would be calculated on the basis of their high 36 months average compensation. Although true in many other systems, this was not true in the Judges' Retirement System. For the judges who got this election, the initial benefit remained calculated on the basis of the judge's pay on the day the judge terminated.

The incorrect information on the election form (as well as an incorrect implication in Section 19-5-902, MCA that the judges would pay increased contributions) may cause liability exposure for the Judges' Retirement System pension trust fund.

The deleted sections of the bill represent an attempt to correct the problem by changing the law to conform to the election form representations. This possible solution ultimately was rejected by the Board, because of their concern that the attempted solution would itself lead to claims alleging unconstitutional impairment of contract.

The only clearly constitutional means of correcting the error is to allow the judges who had the election in 2001 another opportunity to make the same election, but with the correct information regarding the effect of their election. That is the amendment proposed to Section 19-5-902, MCA.

The Public Employees' Retirement Board urges your favorable consideration of HB213, with the proposed amendment.

I will gladly answer any questions you have concerning this lengthy legislation.

Thank you.