

1 HOUSE BILL NO. 329

2 INTRODUCED BY W. STAHL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE PROVISIONS ALLOWING RETIREES OF THE
5 PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' RETIREMENT SYSTEM TO BE
6 REEMPLOYED IN A POSITION COVERED BY THE RETIREMENT SYSTEM WITHOUT A LOSS OF
7 RETIREMENT BENEFITS; AMENDING SECTIONS 19-2-706, 19-3-412, 19-3-908, 19-20-208, 19-20-302, AND
8 19-20-804, MCA, AND SECTION 6, CHAPTER 120, LAWS OF 2003; REPEALING SECTIONS 19-3-1105,
9 19-3-1106, AND 19-20-806, MCA; AND PROVIDING AN EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 19-2-706, MCA, is amended to read:

14 **"19-2-706. Additional service credit for member involuntarily terminated from service.** (1) An
15 employee of the state or university system is entitled to the involuntary termination provision provided in
16 subsection (3) if:

17 (a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs',
18 or highway patrol officers' retirement system;

19 (b) the employee's active service is involuntarily terminated because of elimination of the employee's
20 position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency,
21 or other actions by the legislature or, in the case of a legislator, because of term limits terminating the service
22 of the legislator in either one of the houses of the legislature;

23 (c) the employee is eligible for service retirement or early retirement under the applicable provisions
24 of the retirement system to which the member belongs; and

25 (d) the employee waives termination benefits for which the employee would otherwise be eligible under
26 the State Employee Protection Act.

27 (2) The cost of each year of service credit purchased under this section is the total actuarial cost of
28 purchasing the service credit based on the most recent actuarial valuation of the retirement system.

29 (3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of
30 purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513,

1 19-6-804, 19-7-804, or 19-8-904. The employer-paid portion must be calculated using the formula $A \times B \times C$
 2 when:

3 (a) A is equal to a maximum of 3 additional years of service credit that the member is eligible to
 4 purchase;

5 (b) B is equal to the sum of the employer and employee contribution rates in the member's retirement
 6 system; and

7 (c) C is equal to the member's gross compensation paid during the immediate preceding 12 months
 8 of membership service. The employer may not be charged more than the total actuarial cost of the service credit
 9 purchased by the terminated employee.

10 (4) The member shall pay the difference, if any, between the full actuarial cost of the service credit to
 11 be purchased and the contribution required from the employer under subsection (3). A member may elect to
 12 purchase less than the full amount of service for which the member is eligible under this section, but the election
 13 may not reduce the amount of the employer's contribution as calculated under subsection (3).

14 (5) The board may allow an employer to pay the contributions required under subsection (3) in
 15 installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

16 ~~(6) (a) A member who has received additional service credit under this section and who returns to~~
 17 ~~employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public~~
 18 ~~employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other~~
 19 ~~retirement system forfeits the additional service credit. The employer's contribution to purchase that member's~~
 20 ~~additional service credit, minus any retirement benefits already paid, must be credited to the employer.~~

21 ~~———— (b) As used in subsection (6)(a), the term "same jurisdiction" means all agencies of the state, including~~
 22 ~~the university system."~~

23

24 **Section 2.** Section 19-3-412, MCA, is amended to read:

25 **"19-3-412. Optional membership.** (1) ~~Except as provided in subsection (2), the~~ The following
 26 employees in covered employment may become active members of the retirement system or decline this
 27 optional membership by filing an irrevocable, written application with the board within 180 days of
 28 commencement of their employment:

29 (a) elected officials of the state or local governments who:

30 (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

1 (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under
2 the defined contribution plan at the time of their election;

3 ~~(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered
4 employment with all employers under this chapter in any fiscal year;~~

5 ~~(e)(b)~~ employees directly appointed by the governor;

6 ~~(d)(c)~~ employees working 6 months or less for the legislative branch to perform work related to the
7 legislative session;

8 ~~(e)(d)~~ the chief administrative officer of any city or county;

9 ~~(f)(e)~~ employees of county hospitals or rest homes.

10 ~~————(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a)
11 through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999,
12 to file an irrevocable, written application with the board.~~

13 ~~————(b) A legislator may also become a member as of the date prior to December 30, 2000, that the
14 legislator filed an irrevocable written application with the board to become a member and paid the employee
15 share of contributions determined by the board to be required to purchase the legislator's prior service credit.
16 However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years
17 of membership service, service credit equal to all of the legislator's membership service. The legislative branch
18 is responsible for paying the amount determined by the board to be the employer's share of contributions
19 required to purchase a legislator's service credit under this subsection (2)(b).~~

20 ~~(c) (i) A member who is a local elected official and an active member on April 17, 2003, and who is
21 working in the member's elected position less than 960 hours in a calendar year may, until January 1, 2004,
22 decline optional membership with respect to the member's elected position.~~

23 ~~————(ii) A member who after April 17, 2003, is elected to a local government position in which the member
24 works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional
25 membership with respect to the member's elected position.~~

26 ~~(3)(2)~~ If an employee declines optional membership, the employee shall sign a statement waiving
27 membership and file it with the employer. The employer shall file the statement with the board and retain a copy
28 of the statement. An employee who declines optional membership may not receive membership service or
29 service credit for the employment for which membership was declined.

30 ~~(4)(3)~~ An employee who declined optional membership but later becomes a member may purchase

1 service credit for the period of time beginning with the date of employment in which membership was declined
 2 to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with
 3 19-3-505.

4 ~~(5)~~(4) Membership in the retirement system is not optional for an employee who is already a member.
 5 Upon employment in a position for which membership is optional:

- 6 (a) a member who was an active member before the employment remains an active member;
- 7 (b) a member who was an inactive member before the employment becomes an active member; and
- 8 (c) a member who was a retired member before the employment is subject to part 11 of this chapter.

9 ~~(6)~~(5) An employee who declines membership while employed in a position for which membership is
 10 optional may not later become a member while still employed in that position. If, after a break in service of 30
 11 days or more, an employee who was a member in an optional membership position is reemployed in the same
 12 position or is employed in a different position for which membership is optional, the employee shall again choose
 13 or decline membership. However, if the break in service is less than 30 days, an employee who declined
 14 membership is bound by the employee's original decision to decline membership.

15 ~~(7)~~(6) An employee accepting a position that requires membership shall become a member even if the
 16 employee previously declined membership and did not have a 30-day break in service.

17 ~~(8)~~(7) If an employee or official fails to file with the board an irrevocable, written application within the
 18 time allowed in this section, the employee or official waives membership."

19

20 **Section 3.** Section 19-3-908, MCA, is amended to read:

21 **"19-3-908. Retirement incentive program -- window of eligibility.** (1) Except as provided in
 22 subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service
 23 or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before
 24 January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under
 25 19-3-902 is entitled to the retirement incentive provided in subsection (2).

26 (2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing
 27 up to 3 years of additional service credit that the member is qualified to purchase under 19-3-513.

28 (b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service credit
 29 for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has
 30 not elected for participation in the incentive program as provided in subsection (4).

1 (c) A member is entitled to a refund for that portion of previously purchased additional service that would
 2 otherwise cause the member to be unqualified to receive all or part of the additional service credit provided in
 3 this section.

4 (3) An active member who is involuntarily terminated because of a reduction in force on or after March
 5 1, 1993, but before June 25, 1993, and who, if the member had not been terminated, would have been eligible
 6 under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the
 7 member was, at the time of termination, eligible for service retirement under 19-3-901 or early retirement under
 8 19-3-902 and retires on or after June 25, 1993.

9 (4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program
 10 described in this section is optional. A contracting employer may elect to provide the incentive by filing with the
 11 board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to
 12 subsection (6).

13 (5) County assessors and deputy assessors are eligible for the incentive program even if the employing
 14 county has not elected to participate in the incentive program.

15 (6) The board may allow an employer to pay the contributions required under subsection (2)(a) in
 16 installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The
 17 board shall adopt rules to implement the provisions of this section.

18 (7) A member who has received additional service under this section and who returns to employment
 19 for the same jurisdiction ~~for 960 or more hours in a calendar year~~ in a position covered by the public employees'
 20 retirement system or ~~for 600 or more hours in a calendar year~~ in a position covered under any other retirement
 21 system shall forfeit the additional service. The employer's contributions to purchase that member's additional
 22 service credit, minus any retirement benefits already paid, must be refunded to the employer. For purposes of
 23 this subsection, all agencies of the state, including the university system, are considered the same jurisdiction
 24 and other public employers contracting with the retirement system are each considered separate jurisdictions."
 25

26 **Section 4.** Section 19-20-208, MCA, is amended to read:

27 **"19-20-208. Duties of employer.** Each employer shall:

28 (1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit
 29 the contribution each month to the executive director of the retirement board;

30 (2) transmit to the executive director of the retirement board the employer's contribution prescribed by

1 19-20-605, at the time that the employee contributions are transmitted;

2 (3) keep records and, as required by the retirement board, furnish information to the board that is
3 required in the discharge of the board's duties;

4 (4) upon the employment of a person who is required to become a member of the retirement system,
5 inform the person of the rights and obligations relating to the retirement system;

6 ~~(5) each month, report the name, social security number, and gross earnings of each retired member
7 of the system who has been employed in a part-time teaching, administrative, or faculty position under the
8 reemployment provisions of 19-20-804;~~

9 ~~(6)(5)~~ whenever applicable, inform an employee of the right to elect to participate in the optional
10 retirement program under Title 19, chapter 21;

11 ~~(7)(6)~~ at the request of the retirement board, certify the names of all persons who are eligible for
12 membership or who are members of the retirement system;

13 ~~(8)(7)~~ notify the retirement board of the employment of a person eligible for membership and forward
14 the person's membership application to the board;

15 ~~(9)(8)~~ if the employer has converted to earned compensation amounts excluded from earned
16 compensation, for each retiring member, certify to the board the amounts reported to the system in each of the
17 5 years preceding the member's retirement."
18

19 **Section 5.** Section 19-20-302, MCA, is amended to read:

20 **"19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons
21 must be active members of the retirement system:

22 (a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

23 (b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit
24 of the Montana university system and who has not elected or is not required to participate in the optional
25 retirement program under Title 19, chapter 21;

26 (c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in
27 a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent,
28 a special education cooperative, a public institution of the state of Montana, the Montana state school for the
29 deaf and blind, or a school district;

30 (d) a person who is an administrative officer or a member of the instructional staff of the board of public

1 education;

2 (e) the superintendent of public instruction or a person employed in an instructional services capacity
3 by the office of public instruction; and

4 (f) a person elected to the office of county superintendent of schools.

5 ~~(2) A retired member elected to the office of county superintendent of schools or appointed to complete
6 the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership
7 in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking
8 office, elect to become or to not become an active member of the teachers' retirement system. The retirement
9 system membership of an elected county superintendent of schools as of June 30, 1995, must remain
10 unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.~~

11 ~~(3)(2)~~ In order to be eligible for active membership, a person described in subsection (1) ~~or (2)~~ must:

12 (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal
13 year; and

14 (b) have the compensation for the person's creditable service totally paid by an employer.

15 ~~(4)(3)~~ (a) A substitute teacher or a part-time teacher's aide:

16 (i) shall file an irrevocable written election determining whether to become an active member of the
17 retirement system on the first day of employment; or

18 (ii) is required to become an active member of the retirement system after completing 210 hours of
19 employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership
20 under subsection ~~(4)(a)(i)~~ (3)(a)(i).

21 (b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active
22 member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the
23 substitute teacher is required to remain a member as long as the teacher is available for employment in that
24 capacity.

25 ~~———(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a
26 member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day
27 of employment as a substitute in the next school year after July 1, 1999.~~

28 ~~———(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the
29 retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of
30 employment as a part-time teacher's aide after July 1, 2001.~~

1 ~~(e)~~(c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on
2 the first day of employment of the option to elect membership under subsection ~~(4)(a)(i)~~ (3)(a)(i).

3 ~~(f)~~(d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election
4 period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving
5 membership and the employer shall retain the statement.

6 ~~(5)~~(4) A school district clerk or business official may not become a member of the teachers' retirement
7 system. A school district clerk or business official who is a member of the system on July 1, 2001, is required
8 to remain an active member of the system while employed in that capacity, ~~and any postretirement earnings from~~
9 ~~employment as a school district clerk or school business official are subject to the limit on earnings provided in~~
10 ~~19-20-804.~~

11 ~~(6)~~(5) At any time that a person's eligibility to become a member of the retirement system is in doubt,
12 the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances
13 must be treated alike.

14 ~~(7)~~(6) As used in this section, "part-time teacher's aide" means an individual who works less than 7
15 hours a day assisting a certified teacher in a classroom."
16

17 **Section 6.** Section 19-20-804, MCA, is amended to read:

18 ~~"19-20-804. (Temporary) Allowance for service retirement. (1) Except as provided in 19-20-806,~~
19 ~~upon termination, a member who has attained normal retirement age must receive a retirement allowance equal~~
20 ~~to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of~~
21 ~~the number of years of creditable service and service transferred under 19-20-409.~~

22 ~~(2) Except as provided in subsection (4), a retired member may be employed part-time in a position~~
23 ~~specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater~~
24 ~~of:~~

25 ~~—— (a) one-third of the sum of the member's average final compensation; or~~

26 ~~—— (b) one-third of the median of the average final compensation for members retired during the preceding~~
27 ~~fiscal year as determined by the retirement board.~~

28 ~~(3) Each year on July 1 following the member's retirement effective date, the maximum earning amount~~
29 ~~allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban~~
30 ~~wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor~~

1 agency in the preceding year.

2 ~~(4) (a) Except as provided in 19-20-806 and subsection (5) of this section, the retirement benefit of a~~
 3 ~~retired member employed in a full-time position or earning more than allowed by subsection (2) must be~~
 4 ~~canceled beginning in the month in which the retired member returns to full-time employment or earns more than~~
 5 ~~allowed.~~

6 ~~_____ (b) The retirement benefits of a retired member who was employed in a full-time position or who~~
 7 ~~exceeded the amount that the retired member was eligible to earn under subsection (2) and who was~~
 8 ~~reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of~~
 9 ~~either the month following termination or July 1 of the school year following the date on which the retired member~~
 10 ~~was reemployed. The reinstated retirement benefit is the amount that the retired member would have been~~
 11 ~~entitled to receive had the retired member not returned to employment.~~

12 ~~_____ (c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a~~
 13 ~~retired member who is reemployed as an active member for a minimum of 1 year of full-time service must~~
 14 ~~receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time~~
 15 ~~of the member's previous retirement plus any service credit accumulated subsequent to reemployment.~~

16 ~~_____ (d) A retired member elected to the office of county superintendent or appointed to complete the term~~
 17 ~~of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member~~
 18 ~~is exempt from the employment and earnings limits specified in subsection (2).~~

19 ~~_____ (5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days~~
 20 ~~from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with~~
 21 ~~the same employer, the member must be considered to have continued in the status of an active member and~~
 22 ~~not to have separated from service. Any retirement allowance payments received by the member must be repaid~~
 23 ~~to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be~~
 24 ~~terminated. (Terminates July 1, 2006--sec. 6, Ch. 120, L. 2003.)~~

25 **19-20-804. (Effective July 1, 2006 2005) Allowance for service retirement.** (1) Upon termination, a
 26 member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of
 27 the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years
 28 of creditable service and service transferred under 19-20-409.

29 ~~(2) Except as provided in subsection (4), a retired member may be employed part-time in a position~~
 30 ~~specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater~~

1 of:

2 ~~—— (a) one-third of the sum of the member's average final compensation; or~~

3 ~~—— (b) one-third of the median of the average final compensation for members retired during the preceding~~
4 ~~fiscal year as determined by the retirement board.~~

5 ~~(3) On July 1 of each year following the member's retirement effective date, the maximum earning~~
6 ~~amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase~~
7 ~~for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or~~
8 ~~its successor agency in the preceding year.~~

9 ~~(4)(2) (a) Except as provided in Subject subsection (5) (3), the retirement benefit of a retired member~~
10 ~~employed in a full-time or part-time position or earning more than allowed by subsection (2) covered by the~~
11 ~~retirement system must be canceled beginning in the month in which the retired member returns to full-time~~
12 ~~employment or earns more than allowed.~~

13 ~~(b) The retirement benefits of a retired member who was employed in a full-time position or who~~
14 ~~exceeded the amount that the retired member was eligible to earn under subsection (2) and who was~~
15 ~~reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of~~
16 ~~either the month following termination or July 1 of the school year following the date on which the retired member~~
17 ~~was reemployed. The reinstated retirement benefit is the amount that the retired member would have been~~
18 ~~entitled to receive had the retired member not returned to employment.~~

19 ~~(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a~~
20 ~~retired member who is reemployed as an active member for a minimum of 1 year of full-time service must~~
21 ~~receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time~~
22 ~~of the member's previous retirement plus any service credit accumulated subsequent to reemployment.~~

23 ~~(d) A retired member elected to the office of county superintendent or appointed to complete the term~~
24 ~~of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member~~
25 ~~is exempt from the employment and earnings limits specified in subsection (2).~~

26 ~~(5)(3) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days~~
27 ~~from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with~~
28 ~~the same employer, the member must be considered to have continued in the status of an active member and~~
29 ~~not to have separated from service. Any retirement allowance payments received by the member must be repaid~~
30 ~~to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be~~

1 terminated."

2

3 **Section 7.** Section 6, Chapter 120, Laws of 2003, is amended to read:

4 "**Section 6. Termination.** [This act] terminates July 1, ~~2006~~ 2005."

5

6 NEW SECTION. **Section 8. Repealer.** Sections 19-3-1105, 19-3-1106, and 19-20-806, MCA, are
7 repealed.

8

9 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2005.

10

- END -