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Senate State Administration

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Montana Public Employee Retirement Administration



HB 765 – Revise Retirement Laws

Allowing Certain Legislators to Elect out of Continuing Participation in Retirement System

The Public Employees' Retirement Board (PERB) respectfully opposes this legislation.

- ❖ Over the course of time there have been several irrevocable elections passed by the Legislature
 - Disability Coverage
 - Multiple GABA Coverage for Judges, Firefighters, Police, Highway Patrol Officers
 - Detention Officers into SRS
- ❖ Historically, the only time irrevocable retirement elections have been allowed by the legislature to be revoked is when the retirement system has been amended to offer a better benefit. For example, when the GABA was increased from 1.5% to 3% in 2001, public safety retirement system members who did not elect the 1.5% GABA in 1997 were given a second opportunity to elect to participate in the 3% GABA.
- ❖ House Bill 765 provides an opportunity to revoke an irrevocable election solely because a limited number of individuals' circumstances no longer fit with their original election.
- ❖ Providing the opportunity to undo an irrevocable election to benefit a limited number of members can result in adverse selection – in other words those who elect to undo the irrevocable election are in a position to benefit themselves to the detriment of the retirement system and without complying with statute.
- ❖ Even though this bill affects only a limited number of individuals, it sets the stage for similar legislation in the future, potentially permitting members to "reverse" other irrevocable elections to the detriment of the retirement system.

5-2-304. Continued participation in public retirement systems. (1)

The purpose of this section is to provide a means whereby persons serving in the Montana legislature who are also active members of a public retirement system covered by Title 19, chapters 3, 5 through 9, 13, and 20 by virtue of non-legislative employment may continue their participation in that public retirement systems governed by state law system while serving as a legislator. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds, or to allow members of the legislature to continue to participate in their non-legislative employment public retirement system solely by virtue of their continued service as a legislator. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who is a member of a public retirement system governed by state law may, but is not required to, continue the person's participation in that public retirement system while engaged in official duties as a legislator. To continue participation in the public retirement system, a legislator shall, within 180 days of taking office and in a manner prescribed by the appropriate board, file an irrevocable written election with the teachers' retirement board or the public employees' retirement board.

(3) (a) Except as provided in subsection (b), a person who is a member of the Montana legislature ceases to be eligible to be an active member of their non-legislative employment public retirement system when they terminate their original employment that qualified them for membership in that public retirement system.

(b) A person who is a member of the Montana legislature who elects membership in the public employees' retirement system pursuant 19-3-412(1)(a), must continue participation in the public employees' retirement system until termination of service pursuant to Title 19, chapters 2 and 3.

(3) (4) A legislator who elects to continue participation as provided in subsection (2) shall continue the payments into the fund of the retirement system at the rate currently in effect in the system based on the legislator's monthly salary as a member of that system.

(4) (5) The state contribution must be made by legislative appropriation. It must equal the appropriate employer contribution at the rate currently in effect in the system.

The amendment should be retroactive to December 31, 2006.