



AN ACT REVISING TEACHERS' RETIREMENT SYSTEM LAWS; SUSPENDING RETIREMENT BENEFITS WHEN MEMBERS RETURN TO FULL-TIME EMPLOYMENT COVERED BY THE TEACHERS' RETIREMENT SYSTEM AND PROVIDING FOR THE CALCULATION OF A SECOND BENEFIT; REQUIRING EMPLOYER CONTRIBUTIONS ON WAGES PAID TO RETIRED MEMBERS; CLARIFYING THE EFFECTIVE DATE OF RETIREMENT OF A MEMBER WHO TERMINATES WITHIN 30 DAYS OF THE END OF A SCHOOL YEAR; AMENDING SECTIONS 19-20-501, 19-20-605, 19-20-703, AND 19-20-731, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Resumption of employment by retired member -- suspension of benefits. (1) If a retired member returns to full-time employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) Except as provided in subsection (4), upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits

were suspended.

(3) (a) Except as provided in subsection (4), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and beneficiary previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement allowance with the same beneficiary originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).

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

Section 2. Section 19-20-501, MCA, is amended to read:

"19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration

of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest.

(3) In accordance with the provisions of 19-20-605~~(7)~~(8), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."

Section 3. Section 19-20-605, MCA, is amended to read:

"19-20-605. Pension accumulation account -- employer's contribution. (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation account must be made as provided in this section.

(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to:

— ~~(a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and~~

— ~~(b) beginning July 1, 2009, 9.85% of total earned compensation.~~

(3) For each member employed by a school district or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation.

(4) Beginning July 1, 2013, for each retired member who returns to covered employment under the

provisions of 19-20-731 during all or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of the total earned compensation paid to the retired member.

~~(4)~~(5) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

~~(5)~~(6) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

~~(6)~~(7) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

~~(7)~~(8) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.

~~(8)~~(9) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration."

Section 4. Section 19-20-703, MCA, is amended to read:

"19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) ~~The~~ Except as provided in subsection (5), the retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall

begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A).

(4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence.

(5) If a member terminates within 30 days of the last day of the school year, the member is considered to have terminated at the end of the member's contract, and the retirement allowance may not commence earlier than the first day of the month following the last scheduled pupil-instruction day or pupil-instruction-related day as described in 20-1-304, whichever is later."

Section 5. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits.

(1) (a) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or
 (ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;
 (ii) the value of housing provided by the employer to the retired member;
 (iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;
 (iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and
 (v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of

labor or its successor agency in the preceding calendar year.

(3) Except as provided in ~~subsection (5)~~ [section 1], the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

~~———— (4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:~~

~~———— (a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~———— (b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.~~

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

~~(6)~~(4) For purposes of this section, "position eligible to participate in the retirement system" includes work

performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

~~(7)~~(5) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 1].

Section 7. Coordination instruction. If [this act] and House Bill No. 363 are both passed and approved and if [section 1] of House Bill No. 363 establishes a new section dealing with the reemployment of certain retired teachers, specialists, and administrators, then [section 1 of this act] must read as follows:

"NEW SECTION. Section 1. Resumption of employment by retired member -- suspension of benefits. (1) Except as provided in [section 1 of House Bill No. 363], if a retired member returns to full-time employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) Except as provided in subsection (4), upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection (4), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and beneficiary previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement allowance with the same beneficiary originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).

(4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled."

Section 8. Coordination instruction. If [this act] and House Bill No. 59 are both passed and approved and both contain a section that amends 19-20-731, then the section in House Bill No. 59 that amends 19-20-731 is void.

Section 9. Coordination instruction. If [this act] and House Bill No. 363 are both passed and approved and if both contain a section that amends 19-20-731, then the sections that amend 19-20-731 are void and 19-20-731 must be amended as follows:

"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits.

(1) (a) Except as provided in [section 1 of House Bill No. 363] or as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

- (i) one-third of the sum of the member's average final compensation; or
- (ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

- (i) the amount of health insurance premiums paid by the employer on the retired member's behalf;
- (ii) the value of housing provided by the employer to the retired member;
- (iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;
- (iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and
- (v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in ~~subsection (5)~~ [section 1 of House Bill No. 34] and [section 1 of House Bill No. 363], the retirement benefit of a retired member:

- (a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be

temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

~~———— (4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:~~

~~———— (a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~———— (b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.~~

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

~~(6)~~(4) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

~~(7)~~(5) The retirement allowance of any retired member who is employed in a position and who elects to

participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

Section 10. Effective date. [This act] is effective July 1, 2009.

- END -

I hereby certify that the within bill,
HB 0034, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 34
INTRODUCED BY F. WILMER
BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

AN ACT REVISING TEACHERS' RETIREMENT SYSTEM LAWS; SUSPENDING RETIREMENT BENEFITS WHEN MEMBERS RETURN TO FULL-TIME EMPLOYMENT COVERED BY THE TEACHERS' RETIREMENT SYSTEM AND PROVIDING FOR THE CALCULATION OF A SECOND BENEFIT; REQUIRING EMPLOYER CONTRIBUTIONS ON WAGES PAID TO RETIRED MEMBERS; CLARIFYING THE EFFECTIVE DATE OF RETIREMENT OF A MEMBER WHO TERMINATES WITHIN 30 DAYS OF THE END OF A SCHOOL YEAR; AMENDING SECTIONS 19-20-501, 19-20-605, 19-20-703, AND 19-20-731, MCA; AND PROVIDING AN EFFECTIVE DATE.