



AN ACT PROVIDING FOR ACTUARIAL FUNDING OF THE TEACHERS' RETIREMENT SYSTEM; ESTABLISHING EMPLOYER LIABILITY REGARDING REPORTS RELATING TO RETIRED MEMBERS; CHANGING THE ACTUARIAL INTEREST RATE ON SERVICE PURCHASE AGREEMENTS; AMENDING PROVISIONS GOVERNING WORKING RETIREES; REVISING CAPS ON COMPENSATION THAT CAN BE USED IN THE CALCULATION OF AVERAGE FINAL COMPENSATION; PROVIDING FOR A FULL ACTUARIAL REDUCTION FOR EARLY RETIREMENT; AMENDING SECTIONS 19-20-208, 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-410, 19-20-416, 19-20-427, 19-20-715, 19-20-731, AND 19-20-802, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 19-20-208, MCA, is amended to read:

**"19-20-208. Duties and liability of employer.** (1) Each employer shall:

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

(2)(b) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

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

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

(5)(e) each month, report the name, social security number, and gross earnings of each retired member of the system who has been employed in a part-time teaching, administrative, or faculty position under the reemployment provisions of 19-20-731;

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

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

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

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

(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest."

**Section 2.** Section 19-20-402, MCA, is amended to read:

**"19-20-402. Creditable service for employment in out-of-state public and federal schools.** (1) (a)

A member who has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

- (i) within the United States in a federal or other public school or institution; and
- (ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the

member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after the salary was reported to the system for the fiscal year beginning July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

**Section 3.** Section 19-20-403, MCA, is amended to read:

**"19-20-403. Creditable service for employment while on leave.** (1) (a) A member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave.

(b) To be eligible to purchase service under this section, a member must have at least 5 years of membership service in the retirement system, must have been a member prior to the leave, and must have completed 1 year of active membership in Montana subsequent to the member's return.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and

employee contributions for the member's first full year's teaching salary earned in Montana after the member's return from leave, plus interest.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

**Section 4.** Section 19-20-404, MCA, is amended to read:

**"19-20-404. Creditable service for active service in military, red cross, or merchant marine.** (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To receive credit for this service, a member shall submit to the board a written application and proper certification of the member's military service.

(2) (a) If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection (2)(a) for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service; if the person contributes to the retirement system an amount

equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest paid as follows:

(i) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana; or

(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(b) The contribution rate is that rate in effect at the time the person is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

**Section 5.** Section 19-20-408, MCA, is amended to read:

**"19-20-408. Creditable service for employment in private schools.** (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or

after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

**Section 6.** Section 19-20-410, MCA, is amended to read:

**"19-20-410. Creditable service for extension service employment.** (1) (a) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's teaching salary earned after becoming a member of the retirement system, plus interest paid as follows:

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contribution would have earned had the contribution been in the member's account upon the completion of 5 years of membership service; or

(ii) if a written application to purchase service is signed after July 1, 2012, at the actuarially assumed

interest rate in effect on the date the written application is signed.

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

**Section 7.** Section 19-20-416, MCA, is amended to read:

**"19-20-416. Credit for legislative service required.** (1) A legislator who did not elect to continue to participate in the system, as provided under 5-2-304, and who subsequently participates as a member must be awarded creditable service for legislative service if the legislator contributes:

———(a) an amount equal to the member contributions that would have been made if the legislator had elected membership; ~~and~~

———(b) plus interest paid as follows:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned if they had been on deposit with the retirement system; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The employer contribution must be made by the legislative branch in the amount that would have been contributed if the legislator had elected membership plus interest at the rate that the contributions would have earned if they had been on deposit with the retirement system."

**Section 8.** Section 19-20-427, MCA, is amended to read:

**"19-20-427. Redeposit of contributions previously withdrawn.** (1) In addition to the normal contributions required under 19-20-602, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest ~~in the amount that~~ paid as follows:

(a) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions

would have earned had the contributions not been withdrawn; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The redeposit must be made in accordance with 19-20-415."

**Section 9.** Section 19-20-715, MCA, is amended to read:

**"19-20-715. Compensation limit.** (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, ~~except as provided by rule by the retirement board~~ increases that result from movement on the employer's adopted salary matrix.

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716(1)(b)."

**Section 10.** Section 19-20-731, MCA, is amended to read:

**"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits -- reporting obligations of retired member.** (1) (a) Except as [provided in 19-20-732 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 [19-20-732 and] 19-20-733, the retirement benefit of a retired member: ~~— (a) employed in a part-time position or and~~ 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) For purposes of this section, "position ~~eligible to participate in~~ that is reportable to 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.

(5) For the purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the

position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

~~(5)~~(6) 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. (Bracketed language terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"

**Section 11.** Section 19-20-802, MCA, is amended to read:

**"19-20-802. Early retirement.** (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if the member files with the retirement board the member's written application.

(2) The early retirement allowance must be determined as prescribed in 19-20-804 ~~and section 5, Chapter 549, Laws of 1981,~~ with the exception that the allowance will be reduced as follows:

~~— (a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service; and~~

~~— (b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service~~ using actuarially equivalent factors based on the most recent valuation of the system."

**Section 12. Effective date.** [This act] is effective July 1, 2011.

- END -

I hereby certify that the within bill,  
HB 0116, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

HOUSE BILL NO. 116  
INTRODUCED BY P. INGRAHAM  
BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

AN ACT PROVIDING FOR ACTUARIAL FUNDING OF THE TEACHERS' RETIREMENT SYSTEM; ESTABLISHING EMPLOYER LIABILITY REGARDING REPORTS RELATING TO RETIRED MEMBERS; CHANGING THE ACTUARIAL INTEREST RATE ON SERVICE PURCHASE AGREEMENTS; AMENDING PROVISIONS GOVERNING WORKING RETIREES; REVISING CAPS ON COMPENSATION THAT CAN BE USED IN THE CALCULATION OF AVERAGE FINAL COMPENSATION; PROVIDING FOR A FULL ACTUARIAL REDUCTION FOR EARLY RETIREMENT; AMENDING SECTIONS 19-20-208, 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-410, 19-20-416, 19-20-427, 19-20-715, 19-20-731, AND 19-20-802, MCA; AND PROVIDING AN EFFECTIVE DATE.