



AN ACT CREATING A HYBRID TIER FOR NEW HIRES IN THE TEACHERS' RETIREMENT SYSTEM; REVISING THE RETIREMENT SYSTEM POLICY; REQUIRING THE TEACHERS' RETIREMENT BOARD TO ESTABLISH ANNUALLY AN INTEREST CREDIT RATE; PROVIDING DEATH AND DISABILITY BENEFITS FOR HYBRID TIER MEMBERS; REQUIRING A MEMBER TO ELECT A CONTRIBUTION RATE AT THE TIME OF HIRE; ESTABLISHING A GRADED VESTING SCHEDULE FOR EMPLOYER MATCH; PROVIDING FOR A POSTRETIREMENT EMPLOYMENT AND PURCHASE OF PREVIOUS SERVICE CREDIT IN THE NEW TIER; ESTABLISHING MINIMUM AND MAXIMUM INTEREST CREDIT RATES; GRANTING THE BOARD THE POWER AND DUTY TO ADMINISTER THE NEW TIER; GRANTING THE TEACHERS' RETIREMENT BOARD RULEMAKING AUTHORITY TO ESTABLISH AND ADMINISTER THE HYBRID TIER; REQUIRING OVERSIGHT BY THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE; REQUIRING THE BOARD TO SEEK A RULING OF THE INTERNAL REVENUE SERVICE; PROVIDING FOR AN ALTERNATE RETIREMENT SYSTEM MATCH FOR VESTING BASED ON A RULING FROM THE INTERNAL REVENUE SERVICE; REQUIRING THE BOARD TO CERTIFY WHEN THE HYBRID TIER IS OPERATIONAL; AMENDING SECTIONS 19-20-101, 19-20-102, 19-20-104, 19-20-201, 19-20-501, 19-20-602, 19-20-605, 19-20-702, 19-20-716, 19-20-731, 19-20-732, 19-20-733, 19-20-801, 19-20-902, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the 61st Legislature enacted House Bill No. 659, which directed the 2009-2010 State Administration and Veterans' Affairs Interim Committee (SAVA Committee) to examine and recommend changes to Montana's statewide public retirement systems; and

WHEREAS, the SAVA Committee spent nearly 16 months studying the current funding and design of the retirement systems, as well as options for their redesign; and

WHEREAS, at the conclusion of its study, the SAVA Committee voted to forward to the 62nd Legislature two alternative designs for the Teachers' Retirement System (TRS); and

WHEREAS, one of the alternative designs offers to new hires in the TRS a hybrid alternative within the defined benefit structure that would provide a retirement benefit based on the accrued balance of employee

contributions and interest credits in a member's account at retirement, as well as a match provided by the retirement system.

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

Section 1. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with regular interest or interest credit. ~~Regular interest must be computed and allowed to provide a benefit at the time of retirement.~~

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a tier one member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer

before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means:

(a) the state of Montana;

(b) a public school district, as provided in 20-6-101 and 20-6-701;

(c) the office of public instruction;

(d) the board of public education;

(e) an education cooperative;

(f) the Montana school for the deaf and blind, as described in 20-8-101;

(g) the Montana youth challenge program, as defined in 10-1-101;

(h) a state youth correctional facility, as defined in 41-5-103;

(i) the Montana university system;

(j) a community college; or

(k) any other agency or subdivision of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

(8) "Full-time service" means service that is:

(a) at least 180 days in a fiscal year;

(b) at least 140 hours a month during 9 months in a fiscal year; or

(c) full-time under an alternative school calendar adopted by a school board that is less than 180 days but meets minimum accreditation requirements of 1,080 hours.

(9) "Interest credit" means the rate of interest as determined by the board pursuant to [section 24] and credited to a tier two member's annuity savings account.

~~(9)~~(10) "Internal Revenue Code" has the meaning provided in 15-30-2101.

~~(10)~~(11) "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

~~(11)~~(12) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

~~(12)~~(13) "Normal retirement age" means:

(a) for a tier one member, an age no earlier than 55 years of age, with the right to receive immediate retirement benefits without an actuarial reduction in the benefits; or

(b) for a tier two member, an age no earlier than 60 years of age for a vested employee.

~~(13)~~(14) "Part-time service" means service that is less than 180 days in a fiscal year or less than 140 hours a month during 9 months in a fiscal year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(14)~~(15) "Regular interest" means interest granted to a tier one member's annuity savings account at a

rate set by the retirement board in accordance with 19-20-501(2).

~~(15)~~(16) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

~~(16)~~(17) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in ~~19-20-1001~~.

~~(17)~~(18) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(18)~~(19) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(19)~~(20) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(20)~~(21) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

~~(21)~~(22) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(23) "Tier one member" means a member hired before [the effective date of this section].

(24) "Tier two member" means a member hired on or after [the effective date of this section].

~~(22)~~(25) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602, 19-20-605, and 19-20-607, and who:

(a) as a tier one member, has a right to a future retirement benefit; or
 (b) as a tier two member, has a right to a retirement system match of accumulated contributions as provided pursuant to [section 23].

~~(23)~~(26) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 2. Section 19-20-102, MCA, is amended to read:

"19-20-102. Retirement system -- policy. (1) The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is the state teachers' retirement system of the state of Montana, and the provisions of this chapter do not affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment to this chapter. The state teachers' retirement system is known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have the powers and privileges of a corporation that may be necessary to administer the provisions of this chapter.

(2) It is the policy of the state to:

(a) provide equitable retirement benefits to:

(i) a tier one member of the teachers' retirement system based on ~~each~~ the member's normal service ~~retirement~~ and salary; and

(ii) a tier two member of the teachers' retirement system based on the member's accumulated contributions.

(b) limit the effect on the retirement system of isolated salary increases received by a member, including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and

(c) limit the compensation that a tier one retired member may earn after retirement while working in a position that would normally be covered under the teachers' retirement system to the amount determined under 19-20-731."

Section 3. Section 19-20-104, MCA, is amended to read:

"19-20-104. Guarantee by state. Regular interest charges and interest credit payable, the creation and maintenance of reserves in the pension accumulation account, ~~and~~ the maintenance of accumulated contributions in the annuity savings account, as provided for in this chapter, and the payment of all retirement allowances, refunds, and other benefits granted under the retirement system are obligations of the state of Montana."

Section 4. Section 19-20-201, MCA, is amended to read:

"19-20-201. Administration by retirement board. (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

- (a) establish rules necessary for the proper administration and operation of the retirement system;
- (b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;
- (c) keep a record of all its proceedings, which must be open to public inspection;
- (d) submit a report to the office of budget and program planning detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;
- (e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;
- (f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an analysis of how market performance is affecting the actuarial funding of the retirement system;
- (g) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;
- (h) annually determine the rate of regular interest and interest credit as prescribed in 19-20-501;
- (i) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and
- (j) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, the board, or an authorized representative of the board, may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue

subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

(3) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.

(4) The board shall make available to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and report required pursuant to subsections (1)(d) and (1)(f)."

Section 5. Nonapplication of part to hybrid tier. Except as otherwise provided in [sections 18 through 26], the provisions of this part do not apply to the hybrid tier established in [sections 16 through 24].

Section 6. 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:

(a) regular interest for tier one members; and

(b) interest credit for tier two members pursuant to [section 24].

(3) In accordance with the provisions of 19-20-605(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 7. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings account -- member's contribution. (1) The annuity savings account is an account in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. ~~The~~ Except as provided in [section 18(2)], the normal contribution of each member is 7.15% of the member's earned compensation.

(2) Contributions to and payments from the annuity savings account must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection (2) for service rendered after June 30, 1985;

(ii) for a tier one member, shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) for a tier one member, may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the

benefits provided by the retirement system.

(3) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings account. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings account to the pension accumulation account."

Section 8. 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 9.85% of total earned compensation.

(3) For each member employed by a school district, an education cooperative, a county, 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 or [section 25] 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.

(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.

(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.

(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.

(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 or interest credit on the annuity savings account must be transferred to that account from the pension accumulation account.

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

Section 9. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the allowances described in subsection (2) or (3) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902, [section 22], and part 8 of this chapter. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A--the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(c) Option C--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(3) (a) In lieu of any other option available in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member's lifetime, whichever is greater:

- (i) 10 years if the member is 75 years of age or younger at the time of retirement; or
- (ii) 20 years if the member is 65 years of age or younger at the time of retirement.

(b) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

(4) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different beneficiary if:

(i) the original beneficiary has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(5) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select a different actuarially equivalent optional allowance and designate a different beneficiary or to revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:

(a) the original beneficiary has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(b) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(6) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(7) The retired member shall file the written application required by subsection (4) or (5) with the board within 18 months of the death or divorce of the designated beneficiary."

Section 10. Section 19-20-716, MCA, is amended to read:

"19-20-716. Termination pay to tier one member. (1) If a tier one member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (5) and (6), by signing a binding, irrevocable written election at least 90 days before the member's termination date, one of the following options:

(a) Option 1--The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2--The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that would have been payable by the state as a supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3--The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions

are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) For the purpose of this section, the date of termination is the last day the member is performing any services covered under this chapter.

(4) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections (5) and (6).

(5) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(6) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

Section 11. Section 19-20-731, MCA, is amended to read:

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

(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 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 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) 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.

(6) This section does not apply to tier two members. (Bracketed language terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"

Section 12. Section 19-20-732, MCA, is amended to read:

"19-20-732. (Temporary) Reemployment of certain retired teachers, specialists and administrators -- procedure -- definitions. (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

(i) the retired member completed 30 or more years of creditable service prior to retirement;

(ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

(iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator;

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the appropriate committee each legislative session regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, and 19-20-607.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Employer" means a school district as defined in 20-6-101 and 20-6-701.

(b) "Year" means all or any part of a school year.

(7) This section does not apply to tier two members. (Terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"

Section 13. Section 19-20-733, MCA, is amended to read:

"19-20-733. Resumption of employment by retired member -- suspension of benefits. (1) [Except as provided in 19-20-732,] 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 that 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.

(5) This section does not apply to tier two members. (Bracketed language terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"

Section 14. Section 19-20-801, MCA, is amended to read:

"19-20-801. Eligibility for service retirement. A tier one member who has at least 5 full years of creditable service and who has attained the age of 60 or has been credited with full-time or part-time creditable service in 25 or more years may retire from service if the member has terminated employment in all positions from which the member is eligible to retire and files with the retirement board a written application."

Section 15. Section 19-20-902, MCA, is amended to read:

"19-20-902. Allowance for disability retirement. (1) Upon retirement for disability, a tier one member must receive a disability retirement allowance equal to the greater of:

(a) one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, including service transferred under 19-20-409; or

(b) one-fourth of the member's average final compensation.

(2) The earned compensation in the year of termination that is included in the calculation of average final compensation of a tier one member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received under the member's contract had the member completed the full year. Any termination pay received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year.

(3) Upon retirement for disability, a tier two member must receive a disability retirement allowance as provided in [section 22]."

Section 16. Section 19-20-1001, MCA, is amended to read:

"19-20-1001. Allowances for death of member. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) ~~(a) In~~ (a) Upon the death of a tier one member, in lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804, without reference to 19-20-715, in the same manner as if the member elected option A provided for in

19-20-702(2)(a)-.

(b) Upon the death of a tier two member, the retirement allowance must be determined as prescribed in [section 22] in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

~~(b)~~(3) The effective date of the retirement allowance provided for in subsection (2)(a) or (2)(b) is the earlier of:

~~(i)~~(a) the first of the month following the date of death; or

~~(ii)~~(b) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

~~(c)~~(4) In the event that payments made to the beneficiary do not equal the amount of the member's accumulated contributions before the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

~~(3)~~(5) If the deceased tier one member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the member's designated beneficiary.

~~(4)~~(6) If a deceased tier one member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

~~(5)~~(7) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death or if a family law order has been issued, then:

(a) each beneficiary and alternate payee, if applicable, is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries."

Section 17. Section 19-20-1002, MCA, is amended to read:

"19-20-1002. Payments upon death of retiree. (1) In the event of the death of a tier one member after retirement, a death benefit of \$500 is payable to the designated beneficiary.

(2) In the event that payments made to a benefit recipient do not equal the amount of the member's accumulated contributions before the member's retirement, the difference between the total retirement allowance

paid and the amount of the accumulated contributions must be paid to the beneficiary.

(3) If a deceased tier one member had 5 or more years of creditable service and was retired at the time of death, the sum of \$200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age."

Section 18. Hybrid tier established -- certain members to contribute additional percentage of salary. (1) The board shall establish within the teachers' retirement system a hybrid tier in accordance with the provisions of [sections 18 through 26].

(2) Pursuant to [section 20], certain tier two members shall contribute to the members' hybrid tier account 0.5% of their salary in addition to the contribution required in 19-20-602.

Section 19. Board powers and duties -- rulemaking. (1) The board has the powers and shall perform the duties provided for in 19-20-201 as applicable to the hybrid tier. The board may also exercise the powers and shall perform the duties otherwise provided in this chapter.

(2) The board shall, in accordance with Title 2, chapter 4, adopt rules necessary for the implementation of [sections 18 through 26], including rules:

- (a) concerning treatment of the hybrid tier to maintain the qualified status of the retirement system under applicable sections of the Internal Revenue Code; and
- (b) establishing interest credit pursuant to 19-20-501.

Section 20. Membership in hybrid tier -- written election required for additional contribution -- failure to elect -- effect of election. (1) A member who is initially hired into covered employment on or after [the effective date of this section] may elect the additional contribution under [section 18(2)].

(2) Elections made pursuant to this section must be made at the beginning of employment on a form prescribed by the board.

(3) A member failing to make an election prescribed by this section must be deemed to have elected not to make the additional contribution.

(4) An election under this section, including the default election pursuant to subsection (3), is a one-time irrevocable election.

(5) A member who becomes inactive after an election under this section and who returns to active membership is covered by the member's previous election, including a default election.

(6) A member hired into covered employment on or after the date the hybrid tier becomes effective who previously was a tier one member must:

(a) become a member of the hybrid tier pursuant to subsection (1) if the member withdrew the member's tier one account;

(b) remain a member of the tier one plan if the member has an active or inactive tier one account in the annuity savings account; or

(c) remain a tier one retired member subject to the employment limitations of 19-20-731 through 19-20-733 if the member is a tier one retired member.

(7) (a) A member who elects the additional contribution and retires with service in at least 30 years must receive a retirement system match on the additional 0.5% of salary contributed by the member to the member's accumulated contributions.

(b) A member who elects the additional contribution and retires with service in less than 30 years may not receive a retirement system match on the additional 0.5% of salary contributed by the member to the member's accumulated contributions.

Section 21. Reinstatement of membership. If a tier two member who terminated membership in the hybrid tier returns to employment in a position that is reportable to the retirement system, the member shall resume membership in the hybrid tier at the contribution level elected and is not eligible for a plan choice election.

Section 22. Hybrid tier retirement, disability, and death benefits -- eligibility for benefits. (1) The normal form benefit for a tier two member is a monthly annuity, which must be the actuarial equivalent of the sum of:

- (a) the member's accumulated contributions; and
- (b) subject to [section 23], a retirement system match of the member's accumulated contributions.

(2) (a) A member may elect to receive one of the optional allowances described in 19-20-702(2) and (3) in lieu of the normal form benefit.

(b) A member electing an optional allowance is subject to the provisions of 19-20-702.

(3) A member is eligible to apply for and receive a hybrid tier retirement benefit if the member has at least 5 years of creditable service, has attained 60 years of age, and has terminated all employment in positions that are reportable to the retirement system.

(4) A vested member who has not reached normal retirement age and who retires on a disability retirement benefit, as provided in 19-20-901, must receive the greater of:

- (a) the benefit provided under subsection (1) of this section; or
- (b) if the member has 15 or fewer years of creditable service, 25% of the member's average final compensation.

(5) If a vested member dies before retirement, in lieu of the benefits provided for in 19-20-1001(1), regardless of age, the nominated beneficiary may elect to receive a retirement allowance equal to the greater of:

- (a) the benefit provided under subsection (1) of this section; or
- (b) 1 2/3% for each year of creditable service multiplied by the member's average final compensation.

(6) If a member who qualifies for benefits under subsection (4) or (5) has less than 3 years of full-time service during the 3 years immediately preceding the member's termination or death, the member's earned compensation for purposes of calculating a disability or survivor benefit must be determined as provided in 19-20-805.

Section 23. Tier two member vesting schedule for retirement system match. (1) If this subsection is approved by the internal revenue service pursuant to [section 28], a tier two member has a right to a retirement system match of the member's accumulated contributions according to the following schedule:

- (a) After 5 years of creditable service, the member must receive a 25% match.
- (b) For 6 through 10 years of creditable service, the member must receive an additional 5% match for each full year of service.

(c) For 11 through 15 years of creditable service, the member must receive an additional 10% match for each full year of service.

(d) A member with 15 or more years of creditable service must receive a 100% retirement system match of the member's accumulated contributions.

(2) If the provisions of subsection (1) are not approved by the internal revenue service pursuant to [section 28], a tier two member has a right to a retirement system match of 100% of the member's accumulated

contributions after the member has earned at least 10 years of creditable service.

Section 24. Interest credit for hybrid tier -- minimum and maximum interest credit rates. (1) Each month, the board shall credit to each tier two member's annuity savings account an interest credit, which must be compounded annually.

(2) The board shall set the rate of the interest credit for the tier two members annually pursuant to the following requirements:

(a) The rate may not be lower than 4% nor greater than 9%.

(b) The board may not set the rate higher than 4% if the retirement system was judged to be actuarially unsound as of the date of the most recent actuarial valuation.

Section 25. Tier two postretirement employment. (1) A retired tier two member who has received at least one monthly retirement benefit may be reemployed by an employer without loss of retirement benefits.

(2) An employer hiring a retired tier two member is subject to 19-20-605(4).

Section 26. Tier two procedure for purchase of previous service credit. (1) A tier two member who wishes to redeposit amounts previously withdrawn from the retirement system may deposit those amounts with the retirement system either by a lump-sum payment or installment payments as agreed to between the board and the member.

(2) A vested member who has an account balance in another qualified plan may deposit those amounts with the retirement system through a:

(a) direct rollover of eligible distributions from a retirement plan in section 402(c)(8)(B)(iii) or 402(c)(8)(B)(iv) of the Internal Revenue Code;

(b) rollover of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be included in gross income; or

(c) direct trustee-to-trustee transfer from a governmental 457(b) deferred compensation plan or a 403(b) tax-sheltered annuity.

(3) The total amount transferred or rolled over to the retirement system pursuant to subsection (2) will

not qualify for the retirement system match provided for in [section 22].

Section 27. Legislative oversight committee -- reports and recommendations by board. (1) The state administration and veterans' affairs interim committee shall oversee the implementation of the hybrid tier established pursuant to [sections 18 through 26] and act as an oversight committee on matters of policy.

(2) The teachers' retirement board shall consult with and provide regular updates to the committee and shall make recommendations regarding the design and implementation of the hybrid tier.

Section 28. Board to seek commissioner's ruling or determination -- certification that plan is effective. (1) The teachers' retirement board shall, as soon as possible, request in writing a ruling or determination from the commissioner of the internal revenue service as to whether the hybrid tier established pursuant to [this act] affects the status of the retirement system as a "qualified plan" pursuant to section 401(a) of the Internal Revenue Code. The board shall seek the ruling or determination first based on the vesting schedule provided for in [section 23(1)]. If that schedule is not approved, then the board shall seek the ruling or determination based on the vesting schedule provided for in [section 23(2)].

(2) The board shall certify to the governor and the secretary of state the date on which the hybrid tier established pursuant to [sections 18 through 26] receives a favorable ruling or determination from the internal revenue service. The board shall provide a copy of the certification to the code commissioner.

Section 29. Codification instruction. (1) [Section 5] is intended to be codified as an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to [section 5].

(2) [Sections 18 through 26] are intended to be codified as an integral part of Title 19, chapter 20, and the provisions of Title 19, chapter 20, apply to [sections 18 through 26].

Section 30. Coordination instruction. If House Bill No. 189 and [this act] are both passed and approved, then House Bill No. 189 is void.

Section 31. Effective dates -- contingency. (1) Except as provided in subsection (2), [this act] is effective upon certification and upon notification of the code commissioner pursuant to [section 28].

(2) [Sections 27 through 30] and this section are effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0054, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2011.

Speaker of the House

Signed this _____ day
of _____, 2011.

SENATE BILL NO. 54

INTRODUCED BY J. BALYEAT

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

AN ACT CREATING A HYBRID TIER FOR NEW HIRES IN THE TEACHERS' RETIREMENT SYSTEM; REVISING THE RETIREMENT SYSTEM POLICY; REQUIRING THE TEACHERS' RETIREMENT BOARD TO ESTABLISH ANNUALLY AN INTEREST CREDIT RATE; PROVIDING DEATH AND DISABILITY BENEFITS FOR HYBRID TIER MEMBERS; REQUIRING A MEMBER TO ELECT A CONTRIBUTION RATE AT THE TIME OF HIRE; ESTABLISHING A GRADED VESTING SCHEDULE FOR EMPLOYER MATCH; PROVIDING FOR A POSTRETIREMENT EMPLOYMENT AND PURCHASE OF PREVIOUS SERVICE CREDIT IN THE NEW TIER; ESTABLISHING MINIMUM AND MAXIMUM INTEREST CREDIT RATES; GRANTING THE BOARD THE POWER AND DUTY TO ADMINISTER THE NEW TIER; GRANTING THE TEACHERS' RETIREMENT BOARD RULEMAKING AUTHORITY TO ESTABLISH AND ADMINISTER THE HYBRID TIER; REQUIRING OVERSIGHT BY THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE; REQUIRING THE BOARD TO SEEK A RULING OF THE INTERNAL REVENUE SERVICE; PROVIDING FOR AN ALTERNATE RETIREMENT SYSTEM MATCH FOR VESTING BASED ON A RULING FROM THE INTERNAL REVENUE SERVICE; REQUIRING THE BOARD TO CERTIFY WHEN THE HYBRID TIER IS OPERATIONAL; AMENDING SECTIONS 19-20-101, 19-20-102, 19-20-104, 19-20-201, 19-20-501, 19-20-602, 19-20-605, 19-20-702, 19-20-716, 19-20-731, 19-20-732, 19-20-733, 19-20-801, 19-20-902, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING EFFECTIVE DATES.