

SENATE BILL NO. 406

INTRODUCED BY D. BROWN

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A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN ACT ESTABLISHING THE FAIR PUBLIC PENSION ACT AND REVISING PUBLIC EMPLOYEE RETIREMENT LAWS; REQUIRING NEW PUBLIC EMPLOYEES WHO WOULD OTHERWISE BECOME MEMBERS OF THE PUBLIC EMPLOYEES' OR TEACHERS' RETIREMENT SYSTEM TO INSTEAD BECOME MEMBERS OF A DEFINED CONTRIBUTION RETIREMENT PLAN SIMILAR TO A 401(K) PLAN; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 19-3-203, 19-3-401, 19-3-412, AND 19-20-302, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Fair Public Pension Act".

NEW SECTION. **Section 2. Purpose.** The purpose of the Fair Public Pension Act is to provide future public employees in general and teaching positions with a retirement plan that is fair to taxpayers, allows employees to choose their own investment options, and provides full portability of retirement funds.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 9], the following definitions apply:

- (1) "Board" means the public employees' retirement board established in 2-15-1009.
- (2) "Covered position" means a position in which the employee would have been a member of either the public employees' retirement system or the teachers' retirement system if hired prior to [the effective date of this act] or a position in which the employee is required to be a member of the plan as provided in [section 5].
- (3) "Plan" means the defined contribution public retirement plan established pursuant to [sections 1 through 9].
- (4) "Public employees' retirement system" means the retirement system established in 19-3-103.
- (5) "Teachers' retirement system" means the retirement system established in 19-20-102.

1 **NEW SECTION. Section 4. Board to establish defined contribution public retirement plan --**
2 **administrative fees -- rulemaking.** (1) The board shall establish a defined contribution public retirement plan
3 in accordance with the provisions of [sections 1 through 9]. The plan must be established as a pension plan for
4 the exclusive benefit of members and their beneficiaries and as a qualified governmental plan pursuant to section
5 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a), and its implementing regulations. Retirement accounts
6 must be established for each member of the defined contribution public retirement plan. Assets of the plan must
7 be held in trust. The plan is established in addition to any retirement, pension, deferred compensation, or other
8 benefit plan administered by a retirement board or a political subdivision.

9 (2) The board may contract for plan administration and use a competitive bidding process when
10 contracting for consulting, educational, investment, recordkeeping, or other services for the plan.

11 (3) The board may establish a fund for paying the plan's administrative expenses and assess fees on
12 member account balances to pay the reasonable administrative expenses of the plan.

13 (4) The board shall adopt rules to administer the provisions of [sections 1 through 9].
14

15 **NEW SECTION. Section 5. Membership.** (1) Any public employee who would have become a member
16 of the public employees' retirement system or the teachers' retirement system if hired prior to [the effective date
17 of this act] must become a member of the plan on the first day of employment.

18 (2) A person who is an inactive or retired member of the public employees' retirement system or the
19 teachers' retirement system and who returns to employment in a covered position remains a member of the public
20 employees' retirement system or teachers' retirement system.
21

22 **NEW SECTION. Section 6. Contributions.** (1) Each member of the plan shall contribute 7.9% of the
23 member's compensation to the member's retirement account under the plan.

24 (2) Except as provided in subsection (3), each employer of a plan member shall contribute an amount
25 equal to 7.9% of the member's compensation, which must be allocated as follows:

26 (a) 4.1% must be allocated to the member's retirement account; and

27 (b) 3.8% must be allocated to the defined benefit retirement system or plan under which the member
28 would have been covered if the person had become a member prior to [the effective date of this act].

29 (3) The 3.8% allocated to the defined benefit retirement system or plan under subsection (2)(b) must be
30 used to pay the unfunded liabilities of the system or plan associated with the closure of the system or plan to new

1 members. The amount of the liability and the amortization period associated with the liability must be fixed based
 2 on the actuarial valuation of the system or plan for fiscal year 2014. When that liability has been fully paid, the
 3 3.8% must be allocated to the member's retirement account.

4
 5 **NEW SECTION. Section 7. Investments -- account balance.** (1) Each member shall direct the
 6 investment of the member's account balance among the investment alternatives provided under 19-3-2122.

7 (2) Each member's account balance consists of the employee and employer contributions to the
 8 member's account and the investment income earned on those contributions, minus administrative fees charged
 9 pursuant to [section 4(3)].

10
 11 **NEW SECTION. Section 8. Vesting.** (1) Each member of the plan is immediately vested and is entitled
 12 to the member's account balance as provided in [sections 1 through 9].

13 (2) Upon termination of service, a member may:
 14 (a) withdraw the member's account balance subject to applicable provisions of the Internal Revenue
 15 Code;
 16 (b) roll over the member's account balance to another eligible plan; or
 17 (c) leave the member's account balance in the plan and receive a retirement annuity when eligible under
 18 [section 9].

19
 20 **NEW SECTION. Section 9. Retirement annuity -- return to employment.** (1) A member who has
 21 terminated service and attained at least 60 years of age may elect to have the member's account balance
 22 converted to a retirement annuity as authorized by the board.

23 (2) If a member receiving a retirement annuity under subsection (1) returns to active employment in a
 24 covered position, the member's retirement annuity must be terminated and the member shall become an active
 25 member of the plan.

26
 27 **Section 10.** Section 19-3-203, MCA, is amended to read:

28 **"19-3-203. Conversion of local or state retirement plan -- new conversions prohibited.** (1) ~~Except~~
 29 as provided in subsection (2), the following provisions apply:

30 (a) ~~the~~ The legislative body of any city, county, or public agency having an existing retirement, pension,

1 or annuity fund or system, referred to as the local system, desires to make the members of the local system
 2 members of the public employees' retirement system, it may enter into a contract for that purpose with the board
 3 in the manner provided in 19-3-201. However, the employees voting, as provided in 19-3-201(2)(a), must be
 4 limited to active members of the local system, and approval requires an affirmative vote of two-thirds of the
 5 employees.

6 ~~(2)(b)~~ Subject to the applicable provisions of this chapter, active members of the local system shall
 7 become members of either the defined benefit plan or the defined contribution plan of the retirement system and
 8 are no longer members of the local system. The pensions being paid to pensioners or annuitants of the local
 9 system on the effective date of the contract must be continued and paid at their existing rates by the public
 10 employees' retirement system. The liability for the pensions must be computed by the actuary and charged to the
 11 contracting employer. All cash and securities held by the local system must be transferred to the retirement
 12 system as of the effective date of the contract and credited to the employer. The value of the securities must be
 13 determined by the board.

14 ~~(3)(c)~~ The trustees or other administrative head of the local system as of the effective date of the contract
 15 shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the
 16 active members and the relative shares of the members as of that date. The shares must be charged to the
 17 employer and credited as accumulated contributions of the members in the public employees' retirement system
 18 and administered as if the contributions had been made during membership in the retirement system. Any excess
 19 of employer credits over charges under this section must be offset, with regular interest, against future required
 20 employer contributions. Any excess of employer charges over credits under this section must be payable by the
 21 contracting employer, with regular interest, on a monthly basis as specified in the contract.

22 (2) This section applies only with respect to conversions prior to [the effective date of this act]."
 23

24 **Section 11.** Section 19-3-401, MCA, is amended to read:

25 **"19-3-401. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as
 26 otherwise provided in this chapter, all employees hired into a covered position prior to [the effective date of this
 27 act] become members of the defined benefit plan on the first day of service. Each employer shall file with the
 28 board information affecting the employer's employees' status as members as the board may require. An
 29 employee ~~may~~ hired on or after [the effective date of this act] into a position that would have been a covered
 30 position prior to [the effective date of this act] shall become a member of the defined contribution public retirement

1 plan ~~only as provided in Title 19, chapter 3, part 24~~ provided for in [section 4].

2 (2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an
3 inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit
4 subject to the provisions of this chapter.

5 (b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather
6 than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and
7 not the employer's contributions.

8 (3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is
9 an inactive nonvested member and is not eligible for any benefits from the retirement plan.

10 (b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's
11 accumulated contributions.

12 (4) Except as otherwise provided in this chapter, a member ~~of either the defined benefit plan or the~~
13 ~~defined contribution plan~~ is an active member of the system and is not eligible for a refund of contributions or for
14 benefit payments if the member either:

15 (a) returns to service within 30 days of termination of employment; or

16 (b) terminates one employment but remains employed in another position covered by the system.

17 (5) Time during which an employee of a school district, the Montana school for the deaf and blind, or a
18 public institution of higher education is absent from service during official vacation is counted as membership
19 service in determining eligibility for retirement benefits."

20

21 **Section 12.** Section 19-3-412, MCA, is amended to read:

22 **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and subsection (2) of this section,
23 the following employees and elected officials in covered positions prior to [the effective date of this act] shall elect
24 either to become active members of the retirement system or to decline this optional membership by filing an
25 irrevocable, written application with the board in the manner prescribed in subsection (3):

26 (a) elected officials of the state or local governments, including individuals appointed to fill the unexpired
27 term of elected officials, who:

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

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

1 (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered
2 employment with all employers under this chapter in any fiscal year; Employees who declined membership and
3 who exceed a total of 960 hours of covered employment shall become active members of the system.

4 (c) employees directly appointed by the governor;

5 (d) employees working 10 months or less for the legislative branch to perform work related to the
6 legislative session;

7 (e) the chief administrative officer of any city or county;

8 (f) employees of county hospitals or rest homes.

9 (2) A member who is elected to a local government position in which the member works less than 960
10 hours in a calendar year may, within 90 days of taking office, decline optional membership with respect to the
11 member's elected position.

12 (3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1)
13 and provide written application forms to each employer.

14 (b) Each employee or elected official in a position covered under subsection (1) shall obtain the written
15 application form from the employer and complete and return it to the board.

16 (c) The written application must be filed with the board:

17 (i) for an employee described in subsection (1)(d), within 90 days of the commencement of the
18 employee's employment; and

19 (ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within
20 90 days of the commencement of the employee's or elected official's employment.

21 (d) The employer shall retain a copy of the employee's or elected official's written application.

22 (4) If the employee or elected official fails to file the written application required under subsection (1) with
23 the board within the time allowed in subsection (3), the employee or elected official waives membership.

24 (5) An employee or elected official who declines optional membership may not receive membership
25 service or service credit for the employment for which membership was declined.

26 (6) An employee or elected official who declined optional membership but later becomes a member may
27 purchase service credit for the period of time beginning with the date of employment in which membership was
28 declined to the commencement of membership. Purchase of service credit pursuant to this subsection must
29 comply with 19-3-505.

30 (7) Except as provided in subsection (2), membership in the retirement system is not optional for an

1 employee or elected official who is already a member. Upon employment in a position for which membership is
2 optional:

3 (a) a member who was an active member before the employment remains an active member;

4 (b) a member who was an inactive member before the employment becomes an active member; and

5 (c) a member who was a retired member before the employment is subject to part 11 of this chapter.

6 (8) (a) An employee who declines membership for a position for which membership is optional may not
7 later become a member while still employed with the same employer but in a different optional membership
8 position.

9 (b) An elected official who declines membership for a position for which membership is optional may not
10 later become a member if reelected to the same optional membership position.

11 (c) If, after termination from employment for 30 days or more, an employee who was employed in an
12 optional membership position is reemployed in the same position or is employed in a different position for which
13 membership is optional, the employee shall again choose or decline membership.

14 (d) If the termination from employment is less than 30 days, an employee who declined membership is
15 bound by the employee's original decision to decline membership.

16 (9) An employee accepting a position that requires membership must become a member even if the
17 employee previously declined membership and did not have a 30-day break in service."

18

19 **Section 13.** Section 19-20-302, MCA, is amended to read:

20 "**19-20-302. Active membership.** Except as provided in [section 5], the following provisions apply:

21 (1) Unless otherwise provided by this chapter, the following persons employed by an employer must be
22 active members of the retirement system:

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

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

27 (c) a person employed as a speech-language pathologist, school nurse, professionally qualified person
28 as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school
29 psychologist;

30 (d) a person employed in a teaching or an educational services capacity by the office of a county

1 superintendent, an education cooperative, a public institution of the state of Montana, the Montana state school
2 for the deaf and blind, or a school district;

3 (e) a person who is an administrative officer or a member of the instructional staff of the board of public
4 education;

5 (f) the superintendent of public instruction or a person employed as a teacher or in an educational
6 services capacity by the office of public instruction;

7 (g) except as provided in subsection (2), a person elected to the office of county superintendent of
8 schools;

9 (h) a person who is an administrative officer or a member of the instructional or scientific staff of a
10 community college; and

11 (i) a person employed in a nonclerical position and who is reported on an employer's annual data
12 collection report submitted to the office of public instruction.

13 (2) A retired member elected to the office of county superintendent of schools or appointed to complete
14 the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership
15 in the public employees' retirement system under the provisions of 19-3-412 and shall, within 30 days of taking
16 office, file an irrevocable written election to become or to not become an active member of the teachers'
17 retirement system. The retirement system membership of an elected county superintendent of schools as of June
18 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county
19 superintendent of schools.

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

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

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

24 (4) (a) A substitute teacher or a part-time teacher's aide:

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

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

30 (b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member

1 as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute
2 teacher is required to remain a member as long as the teacher is available for employment in that capacity.

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

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

8 (5) A school district clerk or business official may not become a member of the teachers' retirement
9 system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to
10 remain an active member of the system while employed in that capacity, and any postretirement earnings from
11 employment as a school district clerk or school business official are subject to the limit on earnings provided in
12 19-20-731.

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

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

18 (8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b)
19 may not elect to participate in the optional retirement program under Title 19, chapter 21.

20 (b) An employee of the Montana university system who is a participant in the optional retirement program
21 under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c)
22 through (1)(i) is ineligible to be an active member of this system."

23
24 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through 9] are intended to be
25 codified as an integral part of Title 19, and the provisions of Title 19 apply to [sections 1 through 9].

26
27 **NEW SECTION. Section 15. Submission to electorate.** [This act] shall be submitted to the qualified
28 electors of Montana at the general election to be held in November 2014 by printing on the ballot the full title of
29 [this act] and the following:

30 YES on Legislative Referendum No. _____

