

HOUSE BILL NO. 97

INTRODUCED BY F. WILMER

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT PLACING A CAP ON THE EARNINGS THAT MAY BE INCLUDED IN THE HIGHEST OR FINAL AVERAGE COMPENSATION USED TO DETERMINE A RETIREMENT BENEFIT UNDER THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING SECTIONS 19-2-303, 19-2-1005, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, AND 19-13-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to

1 purchase various types of optional service credit as allowed by the applicable retirement plan.

2 (8) "Annuity" means:

3 (a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent
4 of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are
5 not subject to periodic or one-time increases; or

6 (b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

7 (9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee
8 may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

9 (10) "Benefit" means:

10 (a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit
11 payment provided by a defined benefit retirement plan; or

12 (b) a payment or distribution under the defined contribution retirement plan, including a disability payment
13 under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased
14 under 19-3-2124.

15 (11) "Board" means the public employees' retirement board provided for in 2-15-1009.

16 (12) "Contingent annuitant" means:

17 (a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing
18 monthly benefit after the death of a retired member; or

19 (b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust
20 that may receive a continuing monthly benefit after the death of a retired member.

21 (13) "Covered employment" means employment in a covered position.

22 (14) "Covered position" means a position in which the employee must be a member of the retirement
23 system except as otherwise provided by law.

24 (15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement
25 systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

26 (16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public
27 employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and
28 that is not a defined benefit plan.

29 (17) "Department" means the department of administration.

30 (18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit

1 of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum
2 payments, or benefit from a retirement account upon the death of the member or payment recipient, including
3 annuities derived from the benefits or payments.

4 (19) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the
5 distributee.

6 (20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by
7 reason of physical or mental incapacity. The disability must be incurred while the member is an active member
8 and must be one of permanent duration or of extended and uncertain duration, as determined by the board on
9 the basis of competent medical opinion.

10 (21) "Distributee" means:

11 (a) a member;

12 (b) a member's surviving spouse;

13 (c) a member's spouse or former spouse who is the alternate payee under a family law order as defined
14 in 19-2-907; or

15 (d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as
16 defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

17 (22) "Early retirement benefit" means the retirement benefit payable to a member following early
18 retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

19 (23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover
20 distribution:

21 (a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C.
22 408(a);

23 (b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C.
24 408(b);

25 (c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

26 (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

27 (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue
28 Code, 26 U.S.C. 403(b);

29 (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26
30 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of

1 a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan
2 from a plan under this title; or

3 (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26
4 U.S.C. 408A.

5 (24) "Eligible rollover distribution":

6 (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the
7 distributee, as provided in 19-2-1011;

8 (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former
9 spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal
10 Revenue Code, 26 U.S.C. 414(p).

11 (25) "Employee" means a person who is employed by an employer in any capacity and whose salary is
12 being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying
13 retirement contributions pursuant to 7-11-105.

14 (26) "Employer" means a governmental agency participating in a retirement system enumerated in
15 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as
16 responsible for paying retirement contributions pursuant to 7-11-105.

17 (27) "Essential elements of the position" means fundamental job duties. An element may be considered
18 essential because of but not limited to the following factors:

19 (a) the position exists to perform the element;

20 (b) there are a limited number of employees to perform the element; or

21 (c) the element is highly specialized.

22 (28) "Excess earnings" means the difference, if any, between reported compensation and the limits
23 provided in 19-2-1005(2) used to calculate a member's highest average compensation or final average
24 compensation.

25 ~~(28)~~(29) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the
26 following June 30.

27 ~~(29)~~(30) "Inactive member" means a member who terminates service and does not retire or take a refund
28 of the member's accumulated contributions.

29 ~~(30)~~(31) "Internal Revenue Code" has the meaning provided in 15-30-2101.

30 ~~(31)~~(32) "Member" means either:

1 (a) a person with accumulated contributions and service credited with a defined benefit retirement plan
2 or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

3 (b) a person with a retirement account in the defined contribution plan.

4 ~~(32)~~(33) "Membership service" means the periods of service that are used to determine eligibility for
5 retirement or other benefits.

6 ~~(33)~~(34) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost
7 method required to fund accruing benefits for members of a defined benefit retirement plan during any year in
8 the future.

9 (b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

10 ~~(34)~~(35) "Normal retirement age" means the age at which a member is eligible to immediately receive
11 a retirement benefit based on the member's age, length of service, or both, as specified under the member's
12 retirement system, without disability and without an actuarial or similar reduction in the benefit.

13 ~~(35)~~(36) "Pension" means benefit payments for life derived from contributions to a retirement plan made
14 from state- or employer-controlled funds.

15 ~~(36)~~(37) "Pension trust fund" means a fund established to hold the contributions, income, and assets of
16 a retirement system or plan in public trust.

17 ~~(37)~~(38) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll
18 covered by the defined contribution plan members that is allocated to the public employees' retirement system's
19 defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially
20 fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member
21 selection of the defined contribution plan.

22 ~~(38)~~(39) "Regular contributions" means contributions required from members under a retirement plan.

23 ~~(39)~~(40) "Regular interest" means interest at rates set from time to time by the board.

24 ~~(40)~~(41) "Retirement" or "retired" means the status of a member who has:

25 (a) terminated from service; and

26 (b) received and accepted a retirement benefit from a retirement plan.

27 ~~(41)~~(42) "Retirement account" means an individual account within the defined contribution retirement plan
28 for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of
29 the defined contribution plan or the member's beneficiary.

30 ~~(42)~~(43) "Retirement benefit" means:

1 (a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement,
2 early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a
3 defined benefit plan, the term does not mean an annuity.

4 (b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

5 ~~(43)~~(44) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan
6 under one of the public employee retirement systems enumerated in 19-2-302.

7 ~~(44)~~(45) "Retirement system" or "system" means one of the public employee retirement systems
8 enumerated in 19-2-302.

9 ~~(45)~~(46) "Service" means employment of an employee in a position covered by a retirement system.

10 ~~(46)~~(47) "Service credit" means the periods of time for which the required contributions have been made
11 to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined
12 benefit retirement plan.

13 ~~(47)~~(48) "Service retirement benefit" means the retirement benefit that the member may receive at normal
14 retirement age.

15 ~~(48)~~(49) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member
16 of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are
17 statutorily designated to receive benefits upon the death of the member.

18 ~~(49)~~(50) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement
19 plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to
20 the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or
21 otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the
22 unfunded actuarial liabilities of the retirement plan.

23 ~~(50)~~(51) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a
24 deceased member who died while in service under a defined benefit retirement plan.

25 ~~(51)~~(52) "Termination of employment", "termination from employment", "terminated employment",
26 "terminated from employment", "terminate employment", or "terminates employment" means that:

27 (a) there has been a complete severance of a covered employment relationship by the positive act of
28 either the employee, the employer, or both; and

29 (b) the member is no longer receiving compensation for covered employment, other than any outstanding
30 lump-sum payment for compensatory leave, sick leave, or annual leave.

1 ~~(52)~~(53) "Termination of service", "termination from service", "terminated from service", "terminated
2 service", "terminating service", or "terminates service" means that:

3 (a) there has been a complete severance of a covered employment relationship by the positive act of
4 either the employee, the employer, or both for at least 30 days;

5 (b) no written or verbal agreement exists between employee and employer that the employee will return
6 to covered employment in the future;

7 (c) the member is no longer receiving compensation for covered employment; and

8 (d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to
9 which the member was entitled. For the purposes of this subsection ~~(52)~~ (53), compensation does not mean
10 compensation as a result of a legal action, court order, or settlement to which the board was not a party.

11 ~~(53)~~(54) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit
12 retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that
13 same date.

14 ~~(54)~~(55) "Vested account" means an individual account within a defined contribution plan that is for the
15 exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the
16 income on all contributions in each of the following accounts:

17 (a) the member's contribution account;

18 (b) the vested portion of the employer's contribution account; and

19 (c) the member's account for other contributions.

20 ~~(55)~~(56) "Vested member" or "vested" means:

21 (a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years
22 of membership service; or

23 (b) with respect to the defined contribution plan, a member or the status of a member who meets the
24 minimum membership service requirement of 19-3-2116.

25 ~~(56)~~(57) "Written application" or "written election" means a written instrument, prescribed by the board
26 or required by law, properly signed and filed with the board, that contains all required information, including
27 documentation that the board considers necessary.

28 ~~(57)~~(58) "Written instrument" includes an electronic record containing an electronic signature, as defined
29 in 30-18-102."
30

1 **Section 2.** Section 19-2-1005, MCA, is amended to read:

2 **"19-2-1005. Compensation limit.** (1) A retirement system or plan subject to this chapter may not take
3 into account compensation of a member in excess of the amount permitted in section 401(a)(17) of the Internal
4 Revenue Code, 26 U.S.C. 401(a)(17), as adjusted for cost-of-living increases in accordance with section
5 401(a)(17)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(17)(B).

6 (2) (a) Except as provided in subsection (2)(b), for a member hired on or after July 1, 2013, a retirement
7 system or plan subject to this chapter may not include the following amounts of excess earnings in the calculation
8 of a member's highest average compensation or final average compensation:

9 (i) for the first year included in the calculation, any compensation that is greater than 115% of the
10 compensation paid to the member in the previous year; and

11 (ii) for each subsequent year included in the calculation, any compensation that is greater than 115% of
12 the compensation included in the calculation for the previous year.

13 (b) In determining a member's retirement benefit, total excess earnings, if any, must be divided by the
14 member's total months of service credit and added to each month's compensation included in the member's
15 highest average compensation or final average compensation as limited under subsection (2)(a)."

16

17 **Section 3.** Section 19-3-108, MCA, is amended to read:

18 **"19-3-108. Definitions.** Unless the context requires otherwise, as used in this chapter, the following
19 definitions apply:

20 (1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for
21 the member's services or for time during which the member is excused from work because of a holiday or
22 because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave
23 of absence before any pretax deductions allowed by state or federal law are made.

24 (b) Compensation does not include:

25 (i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;

26 (ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

27 (iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related
28 services;

29 (iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

30 (v) lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid

1 without termination of employment.

2 (2) "Contracting employer" means any political subdivision or governmental entity that has contracted
3 to come into the system under this chapter.

4 (3) "Defined benefit plan" means the plan within the public employees' retirement system established
5 in 19-3-103 that is not the defined contribution plan.

6 (4) "Employer" means the state of Montana, its university system or any of the colleges, schools,
7 components, or units of the university system for the purposes of this chapter, or any contracting employer.

8 (5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from
9 appropriations of the state of Montana and from contracting employers.

10 (6) (a) "Highest average compensation" means:

11 (i) for a member hired prior to July 1, 2011, the highest average monthly compensation during any 36
12 consecutive months of membership service;

13 (ii) for a member hired on or after July 1, 2011, the highest average monthly compensation during any
14 60 consecutive months of membership service; or

15 (iii) in the event a member has not served the minimum specified period of service, the total
16 compensation earned divided by the months of membership service.

17 (b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave,
18 banked holiday time, and annual leave, paid to the member upon termination of employment may be used in the
19 calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis,
20 the regular compensation for a month or months included in the calculation of the highest average compensation.
21 A lump-sum payment may not be added to a single month's compensation.

22 (c) Excess earnings limits must be applied to the calculation of the highest average compensation
23 pursuant to 19-2-1005(2).

24 (7) "System" or "retirement system" means the public employees' retirement system established in
25 19-3-103."

26

27 **Section 4.** Section 19-5-101, MCA, is amended to read:

28 **"19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following
29 definitions apply in this chapter:

30 (1) "Compensation" means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, paid to a

1 member.

2 (2) "Current salary" means the current compensation for the office retired from.

3 (3) (a) "Highest average compensation" means a member's highest average monthly compensation
4 during any 36 consecutive months of membership service.

5 (b) Excess earnings limits must be applied to the calculation of the highest average compensation
6 pursuant to 19-2-1005(2).

7 (4) "Involuntary retirement" means a retirement not for cause and before retirement age.

8 (5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."

9

10 **Section 5.** Section 19-6-101, MCA, is amended to read:

11 **"19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this
12 chapter:

13 (1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for
14 the member's services or for time during which the member is excused from work because the member has taken
15 compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by
16 state or federal law are made.

17 (b) Compensation does not include maintenance, allowances, and expenses.

18 (2) "Dependent child" means an unmarried child of a deceased retired member, who is:

19 (a) under 18 years of age; or

20 (b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time
21 student in anticipation of receiving a certificate or degree.

22 (3) (a) "Highest average compensation" means a member's highest average monthly compensation
23 during any 36 consecutive months of membership service or, in the event a member has not served at least 36
24 months, the total compensation earned divided by the number of months of service.

25 (b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and
26 annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement
27 benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation
28 for a month or months included in the calculation of the highest average compensation. A lump-sum payment may
29 not be added to a single month's compensation.

30 (c) Excess earnings limits must be applied to the calculation of the highest average compensation

1 pursuant to 19-2-1005(2).

2 (4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's
3 death.

4 (5) "Survivor" means a surviving spouse or dependent child of a member."
5

6 **Section 6.** Section 19-7-101, MCA, is amended to read:

7 **"19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this
8 chapter:

9 (1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's
10 services or for time during which the member is excused from work because the member has taken
11 compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by
12 state or federal law are made.

13 (b) Compensation does not include maintenance, allowances, and expenses.

14 (2) "Detention officer" means any detention officer who is hired by a sheriff, employed in a detention
15 center, and acting as a detention officer for the sheriff and who has received or is expected to receive training
16 to meet the employment standards set for detention officers by the Montana public safety officer standards and
17 training council established in 2-15-2029.

18 (3) (a) "Highest average compensation" means:

19 (i) for members hired prior to July 1, 2011, the member's highest average monthly compensation during
20 any 36 consecutive months of membership service;

21 (ii) for members hired on or after July 1, 2011, the highest average compensation during any 60
22 consecutive months of membership service; or

23 (iii) if a member has not served the minimum specified period of membership service as applicable in
24 subsection (3)(a)(i) or (3)(a)(ii), the total compensation earned divided by the number of months of service.

25 (b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and
26 annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement
27 benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation
28 for a month or months included in the calculation of the highest average compensation. A lump-sum payment may
29 not be added to a single month's compensation.

30 (c) Excess earnings limits must be applied to the calculation of the highest average compensation

1 pursuant to 19-2-1005(2).

2 (4) "Investigator" means a person who is employed by the department of justice as a criminal investigator
3 or as a gambling investigator.

4 (5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully
5 trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and
6 licensing."

7

8 **Section 7.** Section 19-8-101, MCA, is amended to read:

9 **"19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this
10 chapter:

11 (1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for
12 the member's services or for time during which the member is excused from work because the member has taken
13 compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax
14 deductions allowed by state or federal law are made.

15 (b) Compensation does not include maintenance, allowances, and expenses.

16 (2) (a) "Highest average compensation" means:

17 (i) for members hired prior to July 1, 2011, the highest average monthly compensation during any 36
18 consecutive months of membership service;

19 (ii) for members hired on or after July 1, 2011, the highest average monthly compensation during any 60
20 consecutive months of membership service; or

21 (iii) in the event a member has not served the minimum specified period of membership service, the total
22 compensation earned divided by the number of months of service.

23 (b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave,
24 annual leave, and banked holiday time, paid to the member upon termination of employment may be used in the
25 calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis,
26 the normal compensation for a month or months included in the calculation of the highest average compensation.
27 A lump-sum payment may not be added to a single month's compensation.

28 (c) Excess earnings limits must be applied to the calculation of the highest average compensation
29 pursuant to 19-2-1005(2).

30 (3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and

1 parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the
2 department of fish, wildlife, and parks money.

3 (4) "Motor carrier officer" means an employee of the department of transportation designated or
4 appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

5 (5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment
6 with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within
7 the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of
8 the state."

9

10 **Section 8.** Section 19-9-104, MCA, is amended to read:

11 **"19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this
12 chapter:

13 (1) (a) "Compensation" means the remuneration paid from funds controlled by an employer in payment
14 for the member's services before any pretax deductions allowed by state or federal law are made.

15 (b) Compensation does not include:

16 (i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments
17 in lieu of sick leave and annual leave; and

18 (ii) maintenance, allowances, and expenses.

19 (2) "Dependent child" means a child of a deceased member:

20 (a) who is unmarried and under 18 years of age; or

21 (b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational
22 institution as a full-time student in anticipation of receiving a certificate or degree.

23 (3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system
24 under 19-9-207.

25 (4) (a) "Final average compensation" means the monthly compensation of a member averaged over the
26 last 36 months of the member's service or, in the event a member has not served at least 36 months, the total
27 compensation earned divided by the number of months of service.

28 (b) Excess earnings limits must be applied to the calculation of the final average compensation pursuant
29 to 19-2-1005(2).

30 (5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the

1 date on which a member both becomes age 50 and completes 5 years of membership service.

2 (6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective
3 date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban
4 law enforcement services, or the entire county included in the county-municipal consolidation.

5 (7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting
6 officer with the requisite professional certification and licensing.

7 (8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the
8 retirement system under 19-9-207.

9 (9) "Retirement date" means the date on which the first payment of the retirement, disability, or
10 survivorship benefits of a member or a survivor is payable.

11 (10) "Surviving spouse" means the spouse married to a member at the time of the member's death.

12 (11) "Survivor" means a surviving spouse or dependent child of the member."
13

14 **Section 9.** Section 19-13-104, MCA, is amended to read:

15 **"19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this
16 chapter:

17 (1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a
18 county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban
19 firefighting services, or the entire county included in the county-municipal consolidation.

20 (2) "Compensation" means:

21 (a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for
22 the member's services before any pretax deductions allowed by state and federal law are made;

23 (b) for a part-paid firefighter employed by a city of the second class:

24 (i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments,
25 compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly
26 confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

27 (ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding
28 overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of
29 sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the
30 second class.

- 1 (c) Compensation for full-paid and part-paid firefighters does not include:
- 2 (i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments
3 in lieu of sick leave; and
- 4 (ii) maintenance, allowances, and expenses.
- 5 (3) "Dependent child" means a child of a deceased member who is:
- 6 (a) unmarried and under 18 years of age; or
- 7 (b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution
8 as a full-time student in anticipation of receiving a certificate or degree.
- 9 (4) "Employer" means:
- 10 (a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211;
- 11 (b) a city or a rural fire district referred to in 19-13-210(3);
- 12 (c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department
13 of military affairs established in 2-15-1201; and
- 14 (d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.
- 15 (5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.
- 16 (6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards
17 provided in 7-33-4106 and 7-33-4107.
- 18 (7) (a) "Highest average compensation" means the monthly compensation of a member averaged over
19 the highest consecutive 36 months of the member's active service or, in the event a member has not served at
20 least 36 consecutive months, the total compensation earned divided by the number of months of service.
- 21 (b) Lump-sum payments for annual leave paid to the member upon termination of employment may be
22 used to replace, on a month-for-month basis, the regular compensation for a month or months included in the
23 calculation of highest average compensation.
- 24 (c) Excess earnings limits must be applied to the calculation of the highest average compensation
25 pursuant to 19-2-1005(2).
- 26 (8) "Minimum retirement date" means the first day of the month coinciding with or immediately following,
27 if none coincides, the date on which a member reaches both 50 years of age or older and completes 5 or more
28 years of membership service.
- 29 (9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in
30 excess of \$300 a year for service as a firefighter and who is appointed by an employer as a firefighter under the

1 standards provided in 7-33-4106 and 7-33-4107.

2 (10) "Prior plan" means the fire department relief association plan of a city that elects to join the
3 retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second
4 class.

5 (11) "Retirement date" means the date on which the first payment of benefits is payable.

6 (12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

7 (13) "Surviving spouse" means the spouse married to a member at the time of the member's death."
8

9 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2013.

10 - END -