

HOUSE BILL NO. 122

INTRODUCED BY B. BENNETT

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS RELATED TO FEDERAL

6 TAX QUALIFICATION OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, THE JUDGES' RETIREMENT

7 SYSTEM, THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM, THE SHERIFFS' RETIREMENT

8 SYSTEM, THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM, THE MUNICIPAL POLICE

9 OFFICERS' RETIREMENT SYSTEM, THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM, AND THE

10 DEFERRED COMPENSATION PROGRAM; REVISING THE DEFINITION OF "NORMAL RETIREMENT AGE"

11 TO COMPLY WITH FEDERAL LAW; PROVIDING FOR THE ALLOCATION OF COSTS FOR CERTAIN

12 ACTUARIAL WORK; REVISING MAXIMUM COMPENSATION AND MAXIMUM BENEFIT PROVISIONS,

13 LIMITATIONS ON ELIGIBLE ROLLOVER DISTRIBUTIONS, MILITARY SERVICE CREDIT, AND ELIGIBILITY

14 FOR SERVICE RETIREMENT TO COMPLY WITH FEDERAL LAW; AMENDING SECTIONS 19-2-303, 19-2-405,

15 19-2-1001, 19-2-1011, 19-2-1014, 19-3-901, 19-5-501, 19-6-501, 19-7-501, 19-8-601, 19-9-801, 19-13-701, AND

16 19-50-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY

17 DATE."

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

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

22 **"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems

23 subject to this chapter, the following definitions apply:

24 (1) "Accumulated contributions" means the sum of all the regular and any additional contributions made

25 by a member in a defined benefit plan, together with the regular interest on the contributions.

26 (2) "Active member" means a member who is a paid employee of an employer, is making the required

27 contributions, and is properly reported to the board for the most current reporting period.

28 (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory

29 manner to represent the present value of the benefits to be derived from the additional service to be credited

30 based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary

1 of the member.

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

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

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

7 (7) "Additional contributions" means contributions made by a member of a defined benefit plan to
8 purchase various types of optional service credit as allowed by the applicable retirement plan.

9 (8) "Annuity" means:

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

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

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

16 (10) "Benefit" means:

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

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

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

23 (12) "Contingent annuitant" means:

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

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

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

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

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

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

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

7 (18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit
8 of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum
9 payments, or benefit from a retirement account upon the death of the member or payment recipient, including
10 annuities derived from the benefits or payments.

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

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

17 (21) "Distributee" means:

18 (a) a member;

19 (b) a member's surviving spouse;

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

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

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

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

28 (a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C.
29 408(a);

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

- 1 408(b);
- 2 (c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);
- 3 (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);
- 4 (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue
- 5 Code, 26 U.S.C. 403(b);
- 6 (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26
- 7 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of
- 8 a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan
- 9 from a plan under this title; or
- 10 (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26
- 11 U.S.C. 408A.
- 12 (24) "Eligible rollover distribution":
- 13 (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the
- 14 distributee, as provided in 19-2-1011;
- 15 (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former
- 16 spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal
- 17 Revenue Code, 26 U.S.C. 414(p).
- 18 (25) "Employee" means a person who is employed by an employer in any capacity and whose salary is
- 19 being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying
- 20 retirement contributions pursuant to 7-11-105.
- 21 (26) "Employer" means a governmental agency participating in a retirement system enumerated in
- 22 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as
- 23 responsible for paying retirement contributions pursuant to 7-11-105.
- 24 (27) "Essential elements of the position" means fundamental job duties. An element may be considered
- 25 essential because of but not limited to the following factors:
- 26 (a) the position exists to perform the element;
- 27 (b) there are a limited number of employees to perform the element; or
- 28 (c) the element is highly specialized.
- 29 (28) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following
- 30 June 30.

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

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

4 (31) "Member" means either:

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

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

8 (32) "Membership service" means the periods of service that are used to determine eligibility for
9 retirement or other benefits.

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

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

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

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

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

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

27 (38) "Regular contributions" means contributions required from members under a retirement plan.

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

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

30 (a) terminated from service; and

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

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

5 (42) "Retirement benefit" means:

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

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

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

12 (44) "Retirement system" or "system" means one of the public employee retirement systems enumerated
13 in 19-2-302.

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

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

18 (47) "Service retirement benefit" means the retirement benefit that the member may receive at normal
19 retirement age.

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

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

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

30 (51) "Termination of employment", "termination from employment", "terminated employment", "terminated

1 from employment", "terminate employment", or "terminates employment" means that:

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

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

6 (52) "Termination of service", "termination from service", "terminated from service", "terminated service",
7 "terminating service", or "terminates service" means that:

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

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

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

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

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

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

22 (a) the member's contribution account;

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

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

25 (55) "Vested member" or "vested" means:

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

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

30 (56) "Written application" or "written election" means a written instrument, prescribed by the board or

1 required by law, properly signed and filed with the board, that contains all required information, including
2 documentation that the board considers necessary.

3 (57) "Written instrument" includes an electronic record containing an electronic signature, as defined in
4 30-18-102."

5

6 **Section 2.** Section 19-2-405, MCA, is amended to read:

7 **"19-2-405. Employment of actuary -- annual investigation and valuation.** (1) The board shall retain
8 a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with
9 public systems of pensions. The actuary is the technical adviser of the board on matters regarding the operation
10 of the retirement systems.

11 (2) The board shall require the actuary to make an annual actuarial investigation into the suitability of
12 the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each
13 defined benefit plan that is a part of the retirement systems.

14 (3) The normal cost contribution rate, which is funded by required employee contributions and a portion
15 of the required employer contributions to each defined benefit retirement plan, must be calculated as the level
16 percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those
17 benefits accrue in the future.

18 (4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required
19 employer contributions to the retirement plan, must be calculated as the level percentage of current and future
20 defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan
21 over a reasonable period of time, not to exceed 30 years, as determined by the board.

22 (b) In determining the amortization period under subsection (4)(a) for the public employees' retirement
23 system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made
24 to the defined benefit plan pursuant to 19-3-2117 and 19-21-203.

25 (5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial
26 experience of the retirement systems and plans. Copies of the report must be provided to the legislature pursuant
27 to 5-11-210.

28 (6) The board may require the actuary to conduct any valuation necessary to administer the retirement
29 systems and the plans subject to this chapter.

30 (7) The board shall require the actuary to prepare for each employer participating in a retirement system

1 the disclosures or the information required to be included in the disclosures as required by law and by the
2 governmental accounting standards board or its generally recognized successor. Each employer shall pay the
3 employer's share of the actuary's cost for preparing the information or disclosures as determined by the board.
4 The board may adopt rules governing how employer costs must be determined and paid."

5

6 **Section 3.** Section 19-2-1001, MCA, is amended to read:

7 **"19-2-1001. Maximum contribution and benefit limitations.** (1) (a) Employee contributions paid to
8 and retirement benefits paid from a retirement system or plan may not exceed the annual limits on contributions
9 and benefits, respectively, allowed by section 415 of the Internal Revenue Code, 26 U.S.C. 415.

10 (b) For purposes of determining whether the annual limitations in subsection (1)(a) are met:

11 (i) all defined benefit plans of the employer, whether or not terminated, must be treated as a single
12 defined benefit plan;

13 (ii) all defined contribution plans of the employer, whether terminated or not, must be treated as a single
14 defined contribution plan;

15 (iii) retirement systems and plans established under Title 19 must be prioritized for disqualification
16 purposes above any plans not established under Title 19; and

17 (iv) retirement systems and plans established under Title 19 that must be aggregated for purposes of the
18 limits in section 415 of the Internal Revenue Code, 26 U.S.C. 415, must be prioritized for qualification purposes
19 based on the system or plan providing the member with the highest benefit.

20 (2) A member may not receive an annual benefit that exceeds the dollar amount specified in section
21 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in
22 section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d).

23 (3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a
24 member to make a contribution to a retirement system or plan if the amount of the contribution would exceed the
25 limits provided in section 415 of the Internal Revenue Code, by using the following methods:

26 (a) If the law requires a lump-sum payment for the purchase of service credit, the board may establish
27 a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or
28 415(n) of the Internal Revenue Code, 26 U.S.C. 415(c) or 415(n).

29 (b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed
30 by section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), the board shall either reduce the member's

1 contribution to an amount within the limits of that section or refuse the member's contribution.

2 (4) (a) Effective for permissive service credit contributions made in limitation years beginning after
3 December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under
4 a retirement system or plan to which this section applies, then the requirements of this section will be treated as
5 met only if:

6 (i) except as provided in subsection (4)(b), the requirements of section 415(b) of the Internal Revenue
7 Code, 26 U.S.C. 415(b), are met, determined by treating the accrued benefit derived from all the contributions
8 as an annual benefit for purposes of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b); or

9 (ii) except as provided in subsection (4)(c), the requirements of section 415(c) of the Internal Revenue
10 Code, 26 U.S.C. 415(c), are met, determined by treating all the contributions as annual additions for purposes
11 of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c).

12 (b) For purposes of applying subsection (4)(a)(i), the retirement system or plan may not fail to meet the
13 reduced limit under section 415(b)(2)(C) of the Internal Revenue Code, 26 U.S.C. 415(b)(2)(C), solely by reason
14 of subsection (4)(a).

15 (c) For purposes of applying subsection (4)(a)(ii), the retirement system or plan may not fail to meet the
16 percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code, 26 U.S.C. 415(c)(1)(B) solely by
17 reason of this subsection (4).

18 (5) For purposes of subsection (4), the term "permissive service credit" means service credit:

19 (a) specifically recognized by a plan subject to this chapter for purposes of calculating a plan member's
20 benefit under the member's plan;

21 (b) that the plan member has not received under the plan;

22 (c) that the plan member may receive only by making a voluntary additional contribution, in an amount
23 determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the
24 service credit; and

25 (d) effective for permissive service credit contributions made in limitation years beginning after December
26 31, 1997, service credit for periods for which there is no performance of service, which, notwithstanding
27 subsection (5)(b), may include service credit purchased in order to provide an increased benefit under the plan.

28 (6) A retirement system or plan fails to meet the requirements of subsection (4) if:

29 (a) more than 5 years of nonqualified service credit are taken into account; or

30 (b) any nonqualified service credit is taken into account before the plan member has at least 5 years of

1 participation under the plan.

2 (7) For purposes of subsection (6), effective for permissive service credit contributions made in limitation
3 years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit
4 other than that allowed with respect to:

5 (a) service, including parental, medical, sabbatical, and similar leave, as an employee of the government
6 of the United States, any state or political subdivision of a state, or any agency or instrumentality of a state or of
7 a political subdivision of a state, other than military service or service for credit that was obtained as a result of
8 a repayment of a refund as described in section 415(k)(3) of the Internal Revenue Code, 26 U.S.C. 415(k)(3);

9 (b) service, including parental, medical, sabbatical, and similar leave, as an employee, other than an
10 employee described in subsection (7)(a), of an education organization described in section 170(b)(1)(A)(ii) of the
11 Internal Revenue Code, 26 U.S.C. 170(b)(1)(A)(ii), that is a public, private, or sectarian school that provides
12 elementary or secondary education through grade 12 or a comparable level of education, as determined under
13 the applicable law of the jurisdiction in which the service was performed;

14 (c) service as an employee of an association of employees who are described in subsection (7)(a); or

15 (d) military service, other than qualified military service under section 414(u) of the Internal Revenue
16 Code, 26 U.S.C. 414(u), recognized by the system or plan.

17 (8) In the case of service described in subsection (7)(a), (7)(b), or (7)(c), service must be nonqualified
18 service if recognition of the service would cause a plan member to receive a retirement benefit for the same
19 service under more than one plan.

20 (9) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A)
21 or 457(e)(17)(A) of the Internal Revenue Code, 26 U.S.C. 403(b)(13)(A) or 457 (e)(17)(A), applies, without regard
22 to whether the transfer is made between plans maintained by the same employer:

23 (a) the limitations in subsection (7) do not apply in determining whether the transfer is for the purchase
24 of permissive service credit; and

25 (b) the distribution rules applicable to the plan under federal law apply to those amounts and any benefits
26 attributable to those amounts.

27 (10) (a) For purposes of this subsection (10), an eligible plan member is an individual who became a
28 member of the plan before January 1, 1998.

29 (b) For an eligible plan member, the limitation in section 415(c)(1) of the Internal Revenue Code, 26
30 U.S.C. 415(c)(1), may not be applied to reduce the amount of permissive service credit that may be purchased

1 to an amount less than the amount that was allowed to be purchased under the terms of the applicable law in
2 effect on August 5, 1997.

3 (11) The limitation year for purposes of section 415 of the Internal Revenue Code, 26 U.S.C. 415, is the
4 calendar year beginning each January 1 and ending December 31.

5 (12) (a) "Salary", for the purposes of determining compliance with section 415 of the Internal Revenue
6 Code, 26 U.S.C. 415, and for no other purposes, means compensation as defined in 26 CFR 1.415(c)-1 through
7 1.415(c)-2(d)(4). However:

8 (i) employee contributions picked up under section 414(h)(2) of the Internal Revenue Code, 26 U.S.C.
9 414(h)(2), are excluded from salary; and

10 (ii) the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, 26
11 U.S.C. 402(g), or any other contribution that is contributed or deferred by the employer at the election of the
12 member and that is not includable in the gross income of the member because of section 125, 403(b), or 457 of
13 the Internal Revenue Code, 26 U.S.C. 125, 403(b), or 457, is included in the definition.

14 (b) For limitation years beginning after December 31, 2000, the term includes any elective amounts that
15 are not includable in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue
16 Code, 26 U.S.C. 132(f)(4).

17 (c) For limitation years beginning no later than January 1, 2008, the term includes compensation paid
18 by the later of 2.5 months after a member's severance from employment or the end of the limitation year that
19 includes the date of the member's severance from employment if:

20 (i) the payment is regular compensation for services during the member's regular working hours or
21 compensation for services outside the member's regular working hours such as overtime or shift differential,
22 commissions, bonuses, or other similar payments and, absent a severance from employment, the payments
23 would have been paid to the member while the member continued in employment with the employer; or

24 (ii) the payment is for unused accrued bona fide sick, vacation, or other leave that the member would
25 have been able to use if employment had continued.

26 (d) For limitation years beginning on or after January 1, 2009, the term, as calculated, may not exceed
27 the annual limit under section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17).

28 (e) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue
29 Code, 26 U.S.C. 414(u)(12), a member receiving from an employer differential wage payments as defined under
30 section 3401(h)(2) of the Internal Revenue Code, 26 U.S.C. 3401(h)(2), must be treated as employed by that

1 employer. The differential wage payments must be treated as compensation for purposes of applying the limits
2 on annual additions under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c). This provision must
3 be applied to all similarly situated employees in a reasonably equivalent manner.

4 (13) For the purposes of applying the limits on a defined benefit plan member's annual benefit under
5 section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), the following apply:

6 (a) Prior to January 1, 2009, any automatic adjustment under the retirement system or a plan subject
7 to this chapter must be taken into consideration when determining a member's applicable limit to the extent
8 required by a reasonable interpretation of 26 CFR 1.415-3(c).

9 (b) On or after January 1, 2009, with respect to a member who does not receive a portion of the
10 member's annual benefit in a lump sum:

11 (i) a member's applicable limit must be applied to the member's annual benefit in the first limitation year
12 without regard to any automatic cost-of-living increases;

13 (ii) to the extent the member's annual benefit equals or exceeds the applicable limit, the member is no
14 longer eligible for cost-of-living increases until the benefit plus the accumulated increases are less than the limit;
15 and

16 (iii) in any subsequent limitation year, the member's annual benefit, including any automatic cost-of-living
17 increase applicable, is subject to the applicable benefit limit, including any adjustment to the dollar limit in section
18 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), under section 415(d) of the Internal Revenue
19 Code, 26 U.S.C. 415(d) and the implementing regulations.

20 (c) On or after January 1, 2009, with respect to a member who receives a portion of the member's annual
21 benefit in a lump sum, a member's applicable limit must be applied, taking into consideration automatic
22 cost-of-living increases as required by section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), and
23 applicable U.S. treasury regulations.

24 (d) (i) A member's annual benefit payable under the member's plan in any limitation year may not be
25 greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section
26 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d), and the implementing regulations.

27 (ii) If the form of benefit without regard to the automatic benefit increase feature is not a straight life or
28 a qualified joint and survivor annuity, then this subsection (13)(d) is applied by either reducing the limit in section
29 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), applicable at the annuity starting date or adjusting the
30 form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions

1 that take into account the death benefits under the form of benefit:

2 (A) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C.
3 417(e)(3), does not apply, the actuarially equivalent straight life annuity benefit that is the greater of:

4 (I) the annual amount of any straight life annuity payable to the member under the member's plan
5 commencing at the same annuity starting date as the form of benefit payable to the member; or

6 (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has
7 the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest
8 assumption, or the applicable statutory interest assumption, and the applicable mortality table described in 26
9 CFR 1.417(e)-1(d)(2); or

10 (B) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C.
11 417(e)(3), applies, the actuarially equivalent straight life annuity benefit that is the greatest of:

12 (I) the annual amount of the straight life annuity commencing at the annuity starting date that has the
13 same actuarial present value as the particular form of benefit payable, computed using the interest rate and
14 mortality table or tabular factor specified in the plan for actuarial experience;

15 (II) the annual amount of the straight life annuity commencing at the annuity starting date that has the
16 same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest
17 assumption, or the applicable statutory interest assumption, and the applicable mortality table for the distribution
18 under 26 CFR 1.417(e)-1(d)(2); or

19 (III) the annual amount of the straight life annuity commencing at the annuity starting date that has the
20 same actuarial present value as the particular form of benefit payable, computed using as the applicable interest
21 rate for the distribution under 26 CFR 1.417(e)-1(d)(3) prior to January 1, 2009, the ~~30-year treasury~~ rate in effect
22 for the month prior to retirement or, on or after January 1, 2009, the ~~30-year treasury~~ rate in effect for the first day
23 of the plan year with a 1-year stabilization period and, in either case, the applicable mortality table for the
24 distribution under 26 CFR 1.417(e)-1(d)(2).

25 (iii) With respect to subsections (13)(d)(ii)(A) and (13)(d)(ii)(B), the board's actuary may reduce the
26 limitation found in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), for testing purposes using the
27 assumptions specified in subsections (13)(d)(ii)(A) and (13)(d)(ii)(B)."

28

29 **Section 4.** Section 19-2-1011, MCA, is amended to read:

30 **"19-2-1011. Limitations on eligible rollover distributions.** (1) An eligible rollover distribution may not

1 include:

2 (a) any distribution that is one of a series of substantially equal periodic payments made at least annually
3 for:

4 (i) the life or the life expectancy of the distributee;

5 (ii) the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary;

6 or

7 (iii) a specified period of 10 years or more;

8 (b) any distribution to the extent the distribution is required under section 401(a)(9) of the Internal
9 Revenue Code, 26 U.S.C. 401(a)(9);

10 (c) the portion of any distribution that is not includable in gross income; or

11 (d) any other distribution that is reasonably expected to total less than \$200 during the year.

12 (2) (a) Effective January 1, 2002, a portion of a distribution may not fail to be an eligible rollover
13 distribution merely because the portion consists of after-tax employee contributions that are not includable in
14 gross income. However, that portion may be transferred only to:

15 ~~(a)~~(i) an individual retirement account or annuity described in section 408(a) or (b) of the Internal
16 Revenue Code, 26 U.S.C. 408(a) or (b);

17 ~~(b)~~(ii) a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, 26
18 U.S.C. 401(a);

19 ~~(c)~~(iii) a qualified plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

20 ~~(d)~~(iv) on or after January 1, 2007, a qualified defined benefit plan described in section 401(a) of the
21 Internal Revenue Code, 26 U.S.C. 401(a); or

22 ~~(e)~~(v) an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

23 (b) that agrees to The plans described in subsections (2)(a)(ii), (2)(a)(iv), and (2)(a)(v) must separately
24 account for amounts that are transferred and earnings on those amounts, including separately accounting for the
25 portion of the distribution that is includable in gross income and the portion of the distribution that is not
26 includable."

27

28 **Section 5.** Section 19-2-1014, MCA, is amended to read:

29 **"19-2-1014. Compliance with federal laws regarding military service.** (1) With respect to a member's
30 death occurring on or after January 1, 2007, while the member is performing qualified military service covered

1 under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent
 2 required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries
 3 are entitled to benefits that the system would have provided if the member's death had occurred while in covered
 4 employment.

5 (2) With respect to a member's disability occurring on or after January 1, 2009, while the member is
 6 performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008,
 7 Public Law 110-245, and to the extent required by section ~~401(a)(37)~~ 414(u)(9) of the Internal Revenue Code,
 8 ~~26 U.S.C. 401(a)(37)~~ 26 U.S.C. 414(u)(9), the member is entitled to any benefits that the system would have
 9 provided had the member become disabled while in covered employment."

10

11 **Section 6.** Section 19-3-901, MCA, is amended to read:

12 **"19-3-901. Eligibility for service retirement.** (1) A member hired prior to July 1, 2011, who has:

13 (a) attained age 60 and has 5 years of membership service is eligible for service retirement;

14 (b) attained at least age 65 before or while employed in a position covered by the public employees'
 15 retirement system is eligible for service retirement regardless of the member's years of membership service; or

16 (c) 30 years or more of membership service is eligible for service retirement regardless of the member's
 17 age.

18 (2) A member hired on or after July 1, 2011, who has:

19 (a) attained age 65 and has 5 years of membership service is eligible for service retirement; or

20 (b) attained age 70 before or while employed in a position covered by the public employees' retirement
 21 system is eligible for service retirement regardless of the member's years of membership service.

22 (3) ~~For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411:~~

23 (a) in each of the circumstances described in subsections (1)(a), (1)(b), and (2), the member has is
 24 treated as having attained normal retirement age; and

25 (b) in each of the circumstances described in subsections (1) and (2), the member has a nonforfeitable
 26 right to the service retirement benefit accrued and payable under the provisions of this chapter, subject to the
 27 member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6."

28

29 **Section 7.** Section 19-5-501, MCA, is amended to read:

30 **"19-5-501. Eligibility for service retirement.** (1) A Subject to a member's right to a refund of the

1 member's accumulated contributions under Title 19, chapter 2, part 6, a vested member who has at least 5 years
 2 of membership service and who has reached the age of 60 has attained normal retirement age and may retire
 3 and receive the is eligible to receive the nonforfeitable service retirement benefits benefit provided in 19-5-502.

4 (2) Retirement benefits may not be approved by the board while the member is drawing full
 5 compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge
 6 pro tempore."

7

8 **Section 8.** Section 19-6-501, MCA, is amended to read:

9 **"19-6-501. Eligibility for service retirement benefit.** (1) A Subject to a member's right to a refund of
 10 the member's accumulated contributions under Title 19, chapter 2, part 6, a member has attained normal
 11 retirement age and is eligible to receive a nonforfeitable service retirement benefit under 19-6-502 after
 12 completing 20 years or more of membership service and terminating service.

13 (2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a vested
 14 member who has attained the later of age 50 or the completion of 20 years of membership service has attained
 15 normal retirement age and has a nonforfeitable right to the member's service retirement."

16

17 **Section 9.** Section 19-7-501, MCA, is amended to read:

18 **"19-7-501. Eligibility for service retirement.** (1) A Subject to a member's right to a refund of the
 19 member's accumulated contributions under Title 19, chapter 2, part 6, member who has completed at least 20
 20 years of membership service has attained normal retirement age and may retire on a is eligible for a
 21 nonforfeitable service retirement benefit under 19-7-503.

22 (2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a vested
 23 member who has attained the later of age 50 or the completion of 20 years of membership service has attained
 24 normal retirement age and has a nonforfeitable right to the member's service retirement."

25

26 **Section 10.** Section 19-8-601, MCA, is amended to read:

27 **"19-8-601. Time of retirement.** (1) Subject to a member's right to a refund of the member's accumulated
 28 contributions under Title 19, chapter 2, part 6, the following members are eligible to receive a nonforfeitable
 29 service retirement benefit under 19-8-603:

30 (a) A a member who has completed at least 20 years of membership service, and reached 50 years of

1 age, ~~has attained normal retirement age and may retire with a service retirement benefit by filing~~ and files a
2 written application with the board; ~~or~~

3 ~~(2)(b) A a~~ vested member who terminated service before completing 20 years of membership service
4 ~~may and applies to~~ begin receiving a service retirement benefit upon reaching 55 years of age ~~and filing a written~~
5 ~~application with the board.~~

6 (2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a member
7 described in (1)(a) is treated as having attained normal retirement age and has a nonforfeitable right to the
8 member's service retirement."

9

10 **Section 11.** Section 19-9-801, MCA, is amended to read:

11 **"19-9-801. Eligibility for service retirement -- commencement of benefit.** A (1) Subject to a member's
12 right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a member has
13 attained normal retirement age and is eligible for a nonforfeitable service retirement benefit under 19-9-804 after
14 terminating service if:

15 (1)(a) the member has completed 20 years or more of membership service; or

16 (2)(b) the member has completed at least 5 years of membership service is vested and has reached 50
17 years of age.

18 (2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a member
19 described in (1)(b) is treated as having attained normal retirement age and has a nonforfeitable right to the
20 member's service retirement."

21

22 **Section 12.** Section 19-13-701, MCA, is amended to read:

23 **"19-13-701. Eligibility for service retirement.** (1) A Subject to a member's right to a refund of the
24 member's accumulated contributions under Title 19, chapter 2, part 6, the following members are eligible to
25 receive a nonforfeitable service retirement benefit under 19-13-704:

26 (a) a member who has completed 20 years or more of membership service has attained normal
27 retirement age and is eligible for service retirement; or

28 (2)(b) A a vested member who terminates service before completing 20 years of service and keeps the
29 member's accumulated contributions on deposit has attained normal retirement age and is eligible for service
30 retirement commencing on the member's minimum retirement date applies for a service retirement upon reaching

1 age 50.

2 (2) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411, a member
3 described in subsection (1)(b) is treated as having attained normal retirement age and has a nonforfeitable right
4 to the member's service retirement."

5

6 **Section 13.** Section 19-50-104, MCA, is amended to read:

7 **"19-50-104. Eligibility to catch up -- normal retirement age.** (1) Except as provided in subsection (2),
8 for the purposes of determining a participant's eligibility to catch up on making the maximum annual deferrals
9 allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

10 (a) the age at which the participant is eligible to retire pursuant to the participant's Title 19 retirement
11 system because of the participant's age, ~~length of service,~~ or both age and length of service, without disability,
12 and with the right to receive immediate retirement benefits without actuarial or similar reduction because of
13 retirement before a specified age; or

14 (b) 65 years of age if the participant is not a member of a Title 19 retirement plan or system, is a member
15 of a defined contribution retirement plan, or is an independent contractor.

16 (2) An eligible plan with participants that include qualified police or firefighters, as defined under 26
17 U.S.C. 415(b)(2)(H)(ii)(I), may either:

18 (a) designate a normal retirement age for the qualified police or firefighters that is no less than 40 years
19 of age; or

20 (b) allow a qualified police or firefighter participant to designate a normal retirement age that is between
21 40 and 70 1/2 years of age.

22 (3) Qualified police or firefighters, as defined in 26 U.S.C. 415(b)(2)(H)(ii)(I), include:

23 (a) police who are members of the municipal police officers' retirement system provided for in Title 19,
24 chapter 9;

25 (b) police who are members of a local police retirement system provided for in Title 19, chapter 19;

26 (c) firefighters who are members of the firefighters' unified retirement system provided for in Title 19,
27 chapter 13;

28 (d) firefighters who are members of a local firefighters' retirement system provided for in Title 19, chapter
29 18; and

30 (e) firefighters who are members of the defined benefit retirement plan of the public employees'

1 retirement system provided for in Title 19, chapter 3."

2

3 NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

4

5 NEW SECTION. **Section 15. Retroactive applicability.** [This act] applies retroactively, within the
6 meaning of 1-2-109, as follows:

7 (1) Section 19-2-1001(12)(e) applies retroactively to a member receiving differential wage payments while
8 on active duty in the uniformed services on or after January 1, 2009.

9 (2) Section 19-2-1001(13)(a) applies retroactively to permissible benefit limitation calculations prior to
10 January 1, 2009.

11

- END -