

HOUSE BILL NO. 167

INTRODUCED BY B. BENNETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE TEACHERS'  
5 RETIREMENT SYSTEM; PROVIDING AN ENHANCED RETIREMENT BENEFIT KNOWN AS THE  
6 "PROFESSIONAL RETIREMENT OPTION" FOR NEW MEMBERS OF THE SYSTEM; CREATING TWO  
7 MEMBERSHIP TIERS WITHIN THE SYSTEM; REVISING THE CALCULATION OF AVERAGE FINAL  
8 COMPENSATION FOR NEW MEMBERS; REVISING ELIGIBILITY FOR EARLY AND NORMAL RETIREMENT  
9 BENEFITS FOR NEW MEMBERS; AMENDING SECTIONS 19-20-101, 19-20-602, 19-20-715, 19-20-801,  
10 19-20-802, 19-20-804, AND 19-20-805, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

15 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the  
16 following definitions apply:

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

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

23 (3) "Average final compensation" means:  
24 (a) for a tier one member, the member's highest average earned compensation in 3 consecutive years,  
25 determined pursuant to 19-20-805, on which contributions have been made; or  
26 (b) for a tier two member, the member's highest average earned compensation in 5 consecutive years,  
27 determined pursuant to 19-20-805, on which contributions have been made.

28 (4) "Beneficiary" means one or more persons formally designated by a member or retiree to receive a  
29 retirement allowance or payment upon the death of the member or retiree, except for a joint annuitant.

30 (5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a

1 retirement allowance.

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

3 (7) (a) "Earned compensation" means, except as limited by subsections (7)(b) and (7)(c) or by  
4 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any  
5 pretax deductions allowed under the Internal Revenue Code are deducted.

6 (b) Earned compensation does not include:

7 (i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life,  
8 vision, dental, or any other insurance;

9 (ii) any direct employer payment or reimbursement for:

10 (A) professional membership dues;

11 (B) maintenance;

12 (C) housing;

13 (D) day care;

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

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

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

17 (iv) any noncash benefit provided by an employer to or on behalf of a member;

18 (v) termination pay unless included pursuant to 19-20-716;

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

21 (vii) payment for sick, annual, or other types of leave paid to a member prior to termination from  
22 employment or accrued in excess of that normally allowed;

23 (viii) incentive or bonus payments paid to a member that are not part of a series of annual payments; or

24 (ix) any similar payment or reimbursement made to or on behalf of a member by an employer.

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

27 (8) "Employer" means:

28 (a) the state of Montana;

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

30 (c) the office of public instruction;

- 1 (d) the board of public education;
- 2 (e) an education cooperative;
- 3 (f) the Montana school for the deaf and blind, as described in 20-8-101;
- 4 (g) the Montana youth challenge program, as defined in 10-1-101;
- 5 (h) a state youth correctional facility, as defined in 41-5-103;
- 6 (i) the Montana university system;
- 7 (j) a community college; or
- 8 (k) any other agency or subdivision of the state that employs a person who is designated a member of
- 9 the retirement system pursuant to 19-20-302.
- 10 (9) "Full-time service" means service that is:
- 11 (a) at least 180 days in a fiscal year;
- 12 (b) at least 140 hours a month during at least 9 months in a fiscal year; or
- 13 (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board
- 14 and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a
- 15 school district operating under an alternative school calendar must be applied uniformly to all employees of the
- 16 school district required to be reported to the retirement system.
- 17 (10) "Internal Revenue Code" has the meaning provided in 15-30-2101.
- 18 (11) "Joint annuitant" means the one person that a retired member who has elected an optional allowance
- 19 under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.
- 20 (12) "Member" means a person who has an individual account in the annuity savings account and
- 21 includes a tier one member and a tier two member unless otherwise specified. An active member is a person
- 22 included under the provisions of 19-20-302. An inactive member is a person included under the provisions of
- 23 19-20-303.
- 24 (13) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the
- 25 lifetime of the retired member.
- 26 (14) "Normal retirement age" means an age no earlier than 55 years of age, with the right to receive
- 27 immediate retirement benefits without an actuarial reduction in the benefits.
- 28 (15) "Part-time service" means service that is not full-time service. Part-time service must be credited in
- 29 the proportion that the actual time worked compares to full-time service.
- 30 (16) "Regular interest" means interest at a rate set by the retirement board in accordance with

1 19-20-501(2).

2 (17) "Retired", "retired member", or "retiree" means a person who has terminated employment that  
3 qualifies the person for membership and who has received at least one monthly retirement benefit paid pursuant  
4 to this chapter.

5 (18) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member  
6 who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

7 (19) "Retirement board" or "board" means the retirement system's governing board provided for in  
8 2-15-1010.

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

11 (21) "Service" means the performance of duties that would entitle the person to active membership in the  
12 retirement system under the provisions of 19-20-302.

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

16 (23) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay,  
17 amounts provided under a window or early retirement incentive plan, or other payments contingent on the  
18 employee terminating employment.

19 (b) Termination pay does not include:

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

22 (ii) amounts that are payable to a member from a plan for the deferral of compensation under section  
23 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

24 (24) "Tier one member" means a person who became a member before July 1, 2013, and has not  
25 withdrawn the member's account balance.

26 (25) "Tier two member" means a person who:

27 (a) became a member on or after July 1, 2013; or

28 (b) after previously withdrawing the member's account balance, became a member again on or after July  
29 1, 2013.

30 ~~(24)~~(26) "Vested" means that a member has been credited with at least 5 full years of membership

1 service upon which contributions have been made and has a right to a future retirement benefit.

2 ~~(25)~~(27) "Written application" or "written election" means a written instrument, required by statute or the  
3 rules of the board, properly signed and filed with the board, that contains all the required information, including  
4 documentation that the board considers necessary."  
5

6 **Section 2.** Section 19-20-602, MCA, is amended to read:

7 **"19-20-602. Annuity savings account -- member's contribution.** (1) The annuity savings account is  
8 an account in which the contributions for the members to provide for their retirement allowance or benefits must  
9 be accumulated in individual accounts for each member.

10 (2) (a) The normal contribution rate of each tier one member is 7.15% of the member's earned  
11 compensation.

12 (b) The normal contribution rate of each tier two member is 7.7% of the member's earned compensation.

13 ~~(2)~~(3) Contributions to ~~and payments from~~ the annuity savings account must be made in the following  
14 manner:

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

16 (i) shall pick up and pay the contributions that would be payable by the member under this subsection  
17 ~~(2)~~ (3) for service rendered after June 30, 1985;

18 (ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

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

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

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

29 (d) The deductions must be made notwithstanding that the minimum compensation provided by law for  
30 a member may be reduced by the deductions. Each member is considered to consent to the deductions

1 prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge  
 2 of all claims for the services rendered by the member during the period covered by the payment, except as to the  
 3 benefits provided by the retirement system.

4 ~~(3)~~(4) The accumulated contributions of a member withdrawn by the member or paid to the member's  
 5 estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity  
 6 savings account. Upon the retirement of a member, the member's accumulated contributions must be transferred  
 7 from the annuity savings account to the pension accumulation account."  
 8

9 **Section 3.** Section 19-20-715, MCA, is amended to read:

10 **"19-20-715. Earned compensation -- limitations.** (1) Compensation in excess of the limitations set  
 11 forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be  
 12 disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees  
 13 may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993.  
 14 For purposes of this section, an eligible employee is an individual who was a member in the retirement system  
 15 prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code  
 16 must be applied prospectively.

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

22 (3) Earned compensation in excess of the amount specified in subsection (2) is considered termination  
 23 pay and must be included in the calculation of average final compensation as provided in 19-20-716(1)(b)."  
 24

25 **Section 4.** Section 19-20-801, MCA, is amended to read:

26 **"19-20-801. Eligibility for service retirement.** (1) A tier one member who is eligible to receive a service  
 27 retirement allowance under 19-20-804(1) if the member:

28 (a) has been credited with at least 5 full years of creditable service and ~~who~~ has attained the age of 60;  
 29 or

30 (b) has been credited with full-time or part-time creditable service in 25 or more years ~~may retire from~~

1 service if the member has terminated employment in all positions from which the member is eligible to retire and  
 2 files with the retirement board a written application.

3 (2) Except as provided in subsection (3), a tier two member is eligible to receive a service retirement  
 4 allowance under 19-20-804(1) if the member:

5 (a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or

6 (b) has been credited with full-time or part-time creditable service in 30 or more years and has attained  
 7 the age of 55.

8 (3) A tier two member who has been credited with 30 or more years of creditable service and has  
 9 attained the age of 60 is eligible for a professional retirement option allowance under 19-20-804(2).

10 (4) To receive a retirement allowance under 19-20-804, the member must have terminated employment  
 11 in all positions from which the member is eligible to retire and must file a written application with the retirement  
 12 board."

13

14 **Section 5.** Section 19-20-802, MCA, is amended to read:

15 **"19-20-802. Early retirement.** (1) (a) A tier one member who is not eligible for service retirement but  
 16 who has been credited with at least 5 years of creditable service and who has attained the age of 50 may retire  
 17 from service and be is eligible for an early retirement allowance if the member files with the retirement board the  
 18 member's written application.

19 (b) A tier two member who is not eligible for service retirement but who has at least 5 years of creditable  
 20 service and has attained the age of 55 is eligible for an early retirement allowance.

21 (2) A member retiring early under subsection (1) must have terminated all employment in all positions  
 22 reportable to the retirement system and must file a written application with the retirement board.

23 ~~(2)~~(3) The early retirement allowance must be determined as prescribed in 19-20-804, with the exception  
 24 that the allowance will be reduced using actuarially equivalent factors based on the most recent actuarial  
 25 valuation of the system."

26

27 **Section 6.** Section 19-20-804, MCA, is amended to read:

28 **"19-20-804. Allowance for service retirement -- professional retirement option allowance --**  
 29 **creditable service limitation.** (1) Upon termination, a tier one or tier two member who qualifies for benefits  
 30 pursuant to 19-20-801(1) or (2) must receive a retirement allowance equal to one-sixtieth of the member's

1 average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable  
2 service ~~and service transferred under 19-20-409.~~

3 (2) (a) Upon termination, a tier two member who qualifies for benefits pursuant to 19-20-801(3) must  
4 receive a professional retirement option allowance equal to 2% of the member's final average compensation, as  
5 limited by 19-20-715, multiplied by the sum of the member's years of creditable service.

6 (b) For the purpose of calculating the professional retirement allowance, creditable service does not  
7 include service transferred under 19-20-409 or service credited before the member became a tier two member  
8 even if the member redeposits the member's withdrawn contributions pursuant to 19-20-427."

9

10 **Section 7.** Section 19-20-805, MCA, is amended to read:

11 **"19-20-805. Calculation of average final compensation.** (1) Except as limited by this section, average  
12 final compensation is calculated by averaging the earned compensation paid to:

13 (a) a tier one member in 3 consecutive fiscal years of full-time service that yields the highest average;  
14 or

15 (b) a tier two member in 5 consecutive fiscal years of full-time service that yields the highest average.

16 (2) (a) The earned compensation of a tier one member who retires under 19-20-802, 19-20-804, or  
17 19-20-902 and has less than 3 consecutive years of full-time service during the 5 years immediately preceding  
18 the member's termination is the compensation that the member would have earned in the 3 years used to  
19 calculate average final compensation had the member's part-time service during the 5 years preceding  
20 termination been full-time service.

21 (b) The earned compensation of a tier two member who retires under 19-20-802, 19-20-804, or  
22 19-20-902 and has less than 5 consecutive years of full-time service during the 7 years immediately preceding  
23 the member's termination is the compensation that the member would have earned in the 5 years used to  
24 calculate average final compensation had the member's part-time service during the 7 years preceding  
25 termination been full-time service.

26 (3) To determine the compensation that the member would have earned under subsection (2), the  
27 compensation reported must be divided by the part-time service credited to the member's account.

28 ~~(3)(4)~~ (a) Subject to subsection ~~(3)(b)~~ (4)(b), if a member has transferred service from the public  
29 employees' retirement system as provided under 19-20-409 and does not have either 3 consecutive years of  
30 full-time service for a tier one member or 5 consecutive years of full-time service for a tier two member reported

1 to the teachers' retirement system, the member's average final compensation must be calculated as follows:

2 (i) if the member's part-time service credit in the public employees' retirement system plus the member's  
3 part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in  
4 determining average final compensation, then the member's annual salary for that fiscal year must be the  
5 member's salary as a member of the public employees' retirement system plus the member's salary as a member  
6 of the teachers' retirement system; or

7 (ii) if the member's part-time service credit in the public employees' retirement system plus the member's  
8 part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used  
9 to determine average final compensation, then the member's part-time salary as a member of the public  
10 employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system  
11 must be divided by the sum of the member's part-time teachers' retirement system service credit and the  
12 member's part-time public employees' retirement system service credit.

13 (b) Compensation reported to the public employees' retirement system used to calculate average final  
14 compensation must be adjusted to exclude any compensation that would be considered termination pay under  
15 this chapter.

16 ~~(4)~~(5) (a) If the benefits excluded from earned compensation pursuant to 19-20-101(7)(b) have been  
17 converted by an employer to earned compensation for all members and have been continuously reported as  
18 earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted  
19 benefit amounts must be included in the calculation of average final compensation.

20 (b) If benefits have been converted to earned compensation as described in subsection ~~(4)~~(5)~~(a)~~ (a) but  
21 have been reported as earned compensation for less than 5 fiscal years or if the member has been given the  
22 option to have benefits converted to earned compensation, any converted benefits reported as earned  
23 compensation in the 3 years used to calculate average final compensation may be included in the calculation of  
24 average final compensation only as termination pay under 19-20-716(1)(b)."

25  
26 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
27 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
28 remains in effect in all valid applications that are severable from the invalid applications.

29  
30 **NEW SECTION. Section 9. Effective date.** [This act] is effective July 1, 2013.

31 - END -