



AN ACT GENERALLY REVISING LAWS RELATED TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; CORRECTING INTEREST PAID UPON REDEPOSITS OF REFUNDED CONTRIBUTIONS TO ACTUARIAL ASSUMED RATE OF RETURN; ALLOWING FOR LIMITED INFORMATION SHARING WITH EMPLOYERS; REQUIRING PAYMENT TO THE TRUST OF A MINOR BENEFICIARY; CLARIFYING THE APPLICATION OF EXCESS EARNINGS FOR CALCULATION OF HIGHEST AND FINAL AVERAGE COMPENSATION; REVISING THE DEFINITION OF COMPENSATION; REVISING MEMBERSHIP IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING PROVISIONS REGARDING THE TRANSFER AND PURCHASE OF SERVICE CREDITS FROM THE TEACHERS' RETIREMENT SYSTEM; ALLOWING MEMBERS TO VOLUNTARILY CANCEL A DISABILITY RETIREMENT BENEFIT; CLARIFYING THE DEFINITION OF "SHERIFF" RELATED TO THE SHERIFFS' RETIREMENT SYSTEM; PROVIDING A TIME LIMIT FOR BOARD APPROVAL OF LATE FIRE COMPANY ANNUAL CERTIFICATES AND TRAINING RECORDS; AMENDING SECTIONS 19-2-403, 19-2-603, 19-2-803, 19-2-1005, 19-3-108, 19-3-318, 19-3-403, 19-3-511, 19-3-1015, 19-3-1211, 19-5-612, 19-6-612, 19-7-101, 19-7-612, 19-8-712, 19-9-904, 19-13-805, AND 19-17-112, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 19-2-403, MCA, is amended to read:

"19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for

fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system.

The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems. A person whose job duties require proportional membership in more than one retirement system is subject to the provisions of those systems.

(5) If fraud or error results in an employee or member being reported to the incorrect retirement system, the board shall correct the error and adjust contributions as necessary.

(6) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(7) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(8) (a) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(b) Information from a member's record may be shared with a member's employer only as far as necessary to conduct official business on behalf of the member.

(9) The board shall enter into memoranda of understanding with the teachers' retirement system to exchange retirement system-related confidential information regarding members, former members, or retirees.

A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

(10) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(11) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the

defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(12) The board may implement third-party mailings under the provisions of 2-6-1017. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

(13) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(14) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (13) or the contested case procedure of the Montana Administrative Procedure Act.

(15) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title."

Section 2. Section 19-2-603, MCA, is amended to read:

"19-2-603. Reinstatement after withdrawal of contributions. Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes an active member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without previous membership service or service credit. The person, while either an active or inactive vested member, may reinstate that membership service or service credit by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus ~~the interest that would have been credited to the person's accumulated contributions had the refund not taken place~~ at the actuarial assumed rate of return in effect at the time of the

redeposit. If the person makes this redeposit, the membership service and service credit previously canceled must be reinstated."

Section 3. Section 19-2-803, MCA, is amended to read:

"19-2-803. Payment to custodian of minor beneficiary. (1) Except as provided in subsection (2), if any benefit from a system is payable to a minor, the benefit must be paid to one of the following:

- (a) a surviving parent, if any;
- (b) a parent awarded custody of the minor in a divorce proceeding;
- (c) a custodian designated under Title 72, chapter 26;
- (d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or
- (e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) ~~If any benefit payable from the highway patrol officers' retirement system under chapter 6 of this title, the municipal police officers' retirement system under chapter 9 of this title, or the firefighters' unified retirement system under chapter 13 of this title is payable to a statutory beneficiary who is a dependent child, as defined under the provisions of that system, of a system member and the system member has established a trust for the dependent child, When a system member has established a trust for a minor beneficiary, including a dependent child as defined under the provisions of Title 19, chapter 6, 9, or 13, then the benefit must be paid to the trustee of that trust.~~

(3) The payment must be in full and complete discharge and acquittance of the board and system on account of the benefit. The person receiving benefit payments pursuant to this section shall account to the minor for the money when the minor reaches the age of majority."

Section 4. Section 19-2-1005, MCA, is amended to read:

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

- (2) (a) Except as provided in subsection (2)(b), for a member hired on or after July 1, 2013, when

calculating the highest average compensation for a member with at least 72 months of service credit or the final average compensation for a member with 48 months of service credit, a retirement system or plan subject to this chapter may not include the following amounts of excess earnings in the calculation of ~~a~~ the member's highest average compensation or final average compensation:

(i) for the first year included in the calculation, any compensation that is greater than 110% of the compensation paid to the member in the previous year; and

(ii) for each subsequent year included in the calculation, any compensation that is greater than 110% of the compensation included in the calculation for the previous year.

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

Section 5. Section 19-3-108, MCA, is amended to read:

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

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

(b) Compensation does not include:

- (i) the contributions made pursuant to 19-3-403~~(4)(a)~~(6)(a) for members of a bargaining unit;
- (ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;
- (iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;
- (iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704;
- (v) lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid without termination of employment; ~~or~~
- (vi) bonuses provided after July 1, 2013, that are one-time~~,~~ or temporary payments in addition to

and not considered part of base pay-;

(vii) remuneration paid to a member to reimburse the member for what would normally be the employer's costs of doing business, such as for workstation equipment or telecom services to facilitate telework; or

(viii) volunteer stipends.

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

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

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

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

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

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

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

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

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

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

(7) "System" or "retirement system" means the public employees' retirement system established in

19-3-103."

Section 6. Section 19-3-318, MCA, is amended to read:

"**19-3-318. Credit of contributions made after member becomes inactive.** Contributions made on the basis of compensation earned by members after they are considered to be inactive members, as provided in 19-3-403~~(4)~~(6), must be credited to the employer."

Section 7. Section 19-3-403, MCA, is amended to read:

"**19-3-403. Exclusions from membership.** The following persons may not become members of the retirement system and, except as provided in subsection ~~(7)~~ (9), may not later purchase previous service under 19-3-505:

- (1) inmates or residents of state institutions or correctional institutions;
- (2) persons in state institutions principally for the purpose of training but who receive compensation;
- (3) independent contractors;
- (4) volunteers;
- (5) student interns, except that a student intern who later becomes an active member by otherwise becoming an employee may, after becoming an active member, affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing to become eligible to receive service credit for the excluded service under the provisions of 19-3-505;

~~(4)~~(6) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement

or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection ~~(4)~~ (6), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

~~(5)~~(7) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);

~~(6)~~(8) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

~~(7)~~(9) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505;

~~(8)~~(10) county school superintendents who are required by 19-20-302(1)(g) and (2) to be members of the teachers' retirement system provided for in Title 19, chapter 20."

Section 8. Section 19-3-511, MCA, is amended to read:

"19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system. (1) Except as provided in subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service credit under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer employer contributions directly to the public employees' retirement system in an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system as follows; based on the interest tables in use by the teachers' retirement system.

(i) for a direct transfer of member contributions, at the interest rate credited by the teachers' retirement system to member accounts; or

(ii) for a redeposit of refunded member contributions, at the public employees' retirement system's actuarial assumed rate of return in effect at the time of redeposit.

(3) (a) The amount of service credit granted in subsection (1) must be on a month-by-month basis equal to the service credit that had been on account with the teachers' retirement system.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514, except as provided in subsection (3)(c).

(c) Active service transferred from the teachers' retirement system or refunded service from the teachers' retirement system that is eligible to be purchased under this section is not subject to service credit limitations.

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) ~~If an active member who has service credit in the teachers' retirement system dies before the member purchases this service credit in the public employees' retirement system and if the service credit from both systems, when combined, entitles the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system~~

~~the contributions necessary to purchase this service credit in the public employees' retirement system, as provided in subsection (2) When an active member of the public employees' retirement system dies while also having service credit on account with the teachers' retirement system, the deceased member's designated beneficiary may apply to have the member's service transferred from the teachers' retirement system if all of the following requirements are met:-~~

~~(a) the member had not previously retired under either retirement system;~~

~~(b) the member was not vested with either system at the time of death;~~

~~(c) the member's total creditable service following transfer would entitle the designated beneficiary to receive a survivor benefit from the public employees' retirement system in the form of a monthly benefit payable for the beneficiary's lifetime;~~

~~(d) at least one individual designated beneficiary will be electing a survivorship benefit;~~

~~(e) the designated beneficiary who is entitled to payment on behalf of the member is the same individual in each retirement system; and~~

~~(f) the transfer of service credit to the public employees' retirement system is upon a full withdrawal of the member's service credit from the teachers' retirement system.~~

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service credit, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request."

Section 9. Section 19-3-1015, MCA, is amended to read:

"19-3-1015. Medical examination of disability retiree -- cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the

disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer forfeits any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member is considered, for the purposes of 19-2-602, to have terminated

service coincident with the commencement of the member's retirement benefit.

(5) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 10. Section 19-3-1211, MCA, is amended to read:

"19-3-1211. Refund when former member dies after transferring to another system. The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403(4)(6) and before receiving the member's accumulated contributions must be paid to the designated beneficiary."

Section 11. Section 19-5-612, MCA, is amended to read:

"19-5-612. Medical examination of disability retiree – cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability retirement benefit.

(3) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 12. Section 19-6-612, MCA, is amended to read:

"19-6-612. Medical examination of disability retiree – cancellation of benefit. (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department

of justice shall pay the cost of the review.

(5) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 13. Section 19-7-101, MCA, is amended to read:

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

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

(b) Compensation does not include:

(i) maintenance, allowances, and expenses; or
(ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay.

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

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

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

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

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

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

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

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

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

Section 14. Section 19-7-612, MCA, is amended to read:

"19-7-612. Medical examination of disability retiree – cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in a comparable pay and

benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's office. If the board's findings are upheld, the public body shall pay the cost of the review.

(4) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 15. Section 19-8-712, MCA, is amended to read:

"19-8-712. Medical examination of disability retiree – cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board

requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(4) The member's former employer may request a medical or psychological review as to the ability of the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review.

(5) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 16. Section 19-9-904, MCA, is amended to read:

"19-9-904. Termination of disability benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905 or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability. If the inactive member refuses to

submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time.

(2) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 17. Section 19-13-805, MCA, is amended to read:

"19-13-805. Reinstatement upon termination of benefit. (1) (a) Except as provided in subsection (1)(c), a member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The employer may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the employer shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of the notice, the

member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly.

(4) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 18. Section 19-17-112, MCA, is amended to read:

"19-17-112. Filing required reports -- limitations. (1) The chief or designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file with the board an annual certificate, the current year's roster, and a membership card for each new member.

(2) (a) The annual certificate is a form reporting a fire company's membership eligibility for the previous fiscal year.

(b) The annual certificate must be completed on a form prescribed by the board and contain the date of organization of the fire company and the full name and date of birth of each member of the fire company who was a member for the entire fiscal year and who successfully completed 30 hours of training during the preceding fiscal year, as required by 19-17-108.

(c) The chief or designated official shall subscribe and verify that the fire company and members qualified under 19-17-108 and 19-17-109.

(d) The board shall maintain the certificate for the purpose of establishing service for members and eligibility for benefits.

(3) The roster must be signed by the fire chief or designated official, filed with the board, and contain information in writing that provides the names of the fire company, its date of organization, officers, and roll of active and inactive members for the current fiscal year. A roster may be updated to report new members but may not be retroactive.

(4) A membership form must be completed and filed with the board for each member who was a member on or before July 1, 2011, and for each new member who joins after July 1, 2011.

(5) The current fire chief shall file any late or amended annual certificates and the associated certified training records within 3 years of the original annual certificate due date. An annual certificate may be amended only once. The board shall consider and may approve ~~late~~ filings up to 3 years after the original due date. Information provided to the board by the fire chief must be in accordance with the board's rules.

(6) The current fire chief may request to appear before the board for consideration of the request to file a late or amended annual certificate."

Section 19. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Sections 2 and 8] are effective July 1, 2024.

- END -

I hereby certify that the within bill,
SB 74, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 74

INTRODUCED BY W. MCKAMEY

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

AN ACT GENERALLY REVISING LAWS RELATED TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; CORRECTING INTEREST PAID UPON REDEPOSITS OF REFUNDED CONTRIBUTIONS TO ACTUARIAL ASSUMED RATE OF RETURN; ALLOWING FOR LIMITED INFORMATION SHARING WITH EMPLOYERS; REQUIRING PAYMENT TO THE TRUST OF A MINOR BENEFICIARY; CLARIFYING THE APPLICATION OF EXCESS EARNINGS FOR CALCULATION OF HIGHEST AND FINAL AVERAGE COMPENSATION; REVISING THE DEFINITION OF COMPENSATION; REVISING MEMBERSHIP IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING PROVISIONS REGARDING THE TRANSFER AND PURCHASE OF SERVICE CREDITS FROM THE TEACHERS' RETIREMENT SYSTEM; ALLOWING MEMBERS TO VOLUNTARILY CANCEL A DISABILITY RETIREMENT BENEFIT; CLARIFYING THE DEFINITION OF "SHERIFF" RELATED TO THE SHERIFFS' RETIREMENT SYSTEM; PROVIDING A TIME LIMIT FOR BOARD APPROVAL OF LATE FIRE COMPANY ANNUAL CERTIFICATES AND TRAINING RECORDS; AMENDING SECTIONS 19-2-403, 19-2-603, 19-2-803, 19-2-1005, 19-3-108, 19-3-318, 19-3-403, 19-3-511, 19-3-1015, 19-3-1211, 19-5-612, 19-6-612, 19-7-101, 19-7-612, 19-8-712, 19-9-904, 19-13-805, AND 19-17-112, MCA; AND PROVIDING EFFECTIVE DATES.