

HOUSE BILL NO. 178  
INTRODUCED BY FRITZ

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING AN EMPLOYER, ~~UP TO JULY 1, 2005,~~ TO EMPLOY A CERTIFIED TEACHER, SPECIALIST, OR ADMINISTRATOR WHO ~~RETIRED ON OR BEFORE AUGUST 31, 2002,~~ HAS BEEN RECEIVING A RETIREMENT ALLOWANCE FOR AT LEAST 12 MONTHS TO BE REEMPLOYED WITHOUT THE LOSS OR INTERRUPTION OF TEACHER RETIREMENT BENEFITS; DEFINING "EMPLOYER"; REQUIRING AN EMPLOYER TO REPORT MONTHLY EMPLOYMENT DATA TO THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM; ~~LIMITING THE CALCULATION OF BENEFITS IF A RETIRED MEMBER RETURNS TO TEACHING;~~ REQUIRING A REPORT BY THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM TO THE 2005 LEGISLATURE; AMENDING SECTIONS SECTION 19-20-804 AND 19-20-1001, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE AND AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Reemployment of certain retired teachers, specialists, or administrators -- limitations -- employer defined.** (1) ~~Beginning on [the effective date of this act] and up to July 1, 2005~~ SUBJECT TO THE PROVISIONS OF THIS SECTION:

(a) a teacher, specialist, or administrator who ~~retired on or before August 31, 2002,~~ HAS BEEN RECEIVING A RETIREMENT ALLOWANCE, EXCEPT A DISABILITY RETIREMENT ALLOWANCE PURSUANT TO PART 9 OF THIS CHAPTER, FOR AT LEAST 12 MONTHS may be employed on a part-time or full-time basis by an employer without the loss or interruption of any payments of retirement benefits if:

(i) the member ~~is fully or temporarily certified by the office of public instruction~~ HOLDS A VALID CERTIFICATE UNDER THE PROVISIONS OF 20-4-106; and

(ii) the employer provides evidence to the office of public instruction each year that the employer has been unable to fill the position ~~with~~ BECAUSE THE EMPLOYER HAS RECEIVED NO APPLICATIONS FOR THE OPEN POSITION OR HAS NOT RECEIVED AN ACCEPTANCE TO AN OFFER TO FILL THE POSITION FROM a nonretired teacher, specialist, or administrator;

(b) an employer shall by the 15th day of each month report to the office of public instruction and to the teachers' retirement system the name, social security number, and gross earnings of each teacher, specialist,

or administrator employed in the preceding month under the provisions of this section;

(c) a retired member reemployed under this section is ineligible for active membership under 19-20-302; and

(d) the office of public instruction and the teachers' retirement system shall report to the appropriate committee in the ~~2005~~ 2007 legislative session regarding the implementation and results of this section.

(2) A RETIREE REEMPLOYED PURSUANT TO THIS SECTION MUST BE CONSIDERED AN ACTIVE MEMBER FOR THE PURPOSES OF CALCULATING RETIREMENT SYSTEM CONTRIBUTIONS REQUIRED UNDER 19-20-604 AND 19-20-605.

(3) A RETIREE REEMPLOYED PURSUANT TO THIS SECTION IS EXEMPT FROM THE EARNINGS AND EMPLOYMENT LIMITS PROVIDED IN 19-20-804(2) THROUGH (5).

(4) IF REEMPLOYED IN A POSITION COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, THE RETIREE IS SUBJECT TO ALL TERMS AND CONDITIONS OF THE AGREEMENT AND IS ENTITLED TO ALL BENEFITS AND PROTECTIONS PROVIDED BY THE AGREEMENT.

(5) THE BOARD MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

~~(2)(6)~~ (6) As used in this section, "employer" means a ~~K-12~~ PUBLIC school district, AS DEFINED IN 20-6-101 AND 20-6-701, the Pine Hills youth correctional facility, the ~~Riverside correctional facility~~ FACILITIES, SPECIAL EDUCATION COOPERATIVES, and the Montana school for the deaf and blind.

~~NEW SECTION. Section 2. Termination or recalculation of retirement benefits. Beginning on [the effective date of this act] and up to July 1, 2005:~~

~~(1) all payments of retirement benefits must be terminated if a retired member, after being reemployed under the provisions of [section 1] without the loss or interruption of retirement benefit payments, subsequently elects to become an active member;~~

~~(2) upon retirement as an active member, all employee and employer contributions due under 19-20-602 and 19-20-605 must be withheld and reported by the employer to the teachers' retirement system; and~~

~~(3) at the time that the member terminates employment and retires, a second retirement benefit must be calculated pursuant to this section based only on the service and compensation earned after the date of reemployment and must be added to the original benefit that the retired member was receiving at the time that the member was reemployed under [section 1].~~

**Section 2.** Section 19-20-804, MCA, is amended to read:

**"19-20-804. Allowance for service retirement.** (1) ~~Upon~~ On [the effective date of this act]:

~~(a) upon~~ EXCEPT AS PROVIDED IN [SECTION 1], UPON termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.

~~(2)(b)(2) Except~~ EXCEPT as provided in ~~[section 1] or in~~ subsection ~~(4) (1)(d) of this section (4)~~, a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

~~(a)(i)(A)~~ one-third of the sum of the member's average final compensation; or

~~(b)(ii)(B)~~ one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

~~(3)(c)(3) On~~ Each year on July 1 of each year following the member's retirement effective date, the maximum earning amount allowed under subsection ~~(2)(a)(1)(b)(i)(2)(A)~~ is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.

~~(4) (a)(d)(i)(4) (A) Except~~ EXCEPT as provided in [section 1] and subsection ~~(5) (1)(e) (5) of this section~~, the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection ~~(2) (1)(b) (2)~~ must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.

~~(b)(ii)(B) The~~ THE retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection ~~(2) (1)(b) (2)~~ and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

~~(c)(iii)(C) Upon~~ UPON retirement after cancellation of a retired member's benefit pursuant to subsection ~~(4)(a)(1)(d)(i)(4)(A)~~, a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

~~(5)(e)(5) If~~ IF an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment

with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated.

~~———— (2) On July 1, 2005:~~

~~———— (a) upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409;~~

~~———— (b) except as provided in subsection (3)(b), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:~~

~~———— (i) one-third of the sum of the member's average final compensation; or~~

~~———— (ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.~~

~~———— (3) (a) On July 1 of each year following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(b)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.~~

~~———— (b) (i) Except as provided in subsection (3)(c), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2)(b) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.~~

~~———— (ii) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2)(b) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.~~

~~———— (iii) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (3)(b)(i), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.~~

~~(c) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."~~

~~Section 4. Section 19-20-1001, MCA, is amended to read:~~

~~"19-20-1001. Allowances for death of member. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.~~

~~(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804(1)(a) or (2)(a) and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).~~

~~(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:~~

~~(i) the first of the month following the date of death; or~~

~~(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.~~

~~(c) In the event that payments made to the beneficiary do not equal the amount of the member's accumulated contributions before the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.~~

~~(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the member's designated beneficiary.~~

~~(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.~~

~~(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this~~

section upon the member's death, then:

- ~~—— (a) each beneficiary is entitled to share in that benefit; and~~
- ~~—— (b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries."~~

NEW SECTION. Section 3. Codification instruction. [~~Sections SECTION 1 and 2~~] are ~~is~~ intended to be codified as an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to [~~sections SECTION 1 and 2~~].

NEW SECTION. Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 5. Effective date -- applicability. [This act] is effective on ~~passage and approval~~ JULY 1, 2003, and applies to teachers, specialists, and administrators who are employed for the school fiscal year beginning on or after [the effective date of this act] and who are earning more than one-third of the average final compensation provided for under 19-20-804.

NEW SECTION. SECTION 6. TERMINATION. [THIS ACT] TERMINATES JULY 1, 2006.

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