

SENATE BILL NO. 110

INTRODUCED BY TOOLE

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN OPTIONAL RETIREMENT PLAN MEMBERSHIP PROVISIONS; ALLOWING STATE AND LOCAL ELECTED OFFICIALS WHO WERE DRAWING A RETIREMENT BENEFIT UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM OR THE TEACHERS' RETIREMENT SYSTEM AT THE TIME OF THEIR ELECTION TO ~~A POSITION~~ CERTAIN POSITIONS COVERED BY THE RETIREMENT SYSTEM TO DECIDE NOT TO RETURN TO ACTIVE MEMBERSHIP IN THE SYSTEM AND TO CONTINUE TO RECEIVE THEIR RETIREMENT BENEFITS; ~~AND~~ AMENDING SECTIONS 19-3-412 ~~AND~~ 19-3-1106, 19-20-302, AND 19-20-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (2), THE following employees in covered employment may become active members of the retirement system ~~at their option~~ OR DECLINE THIS OPTIONAL MEMBERSHIP by filing an irrevocable, written application with the board within 180 days of commencement of their employment:

- (a) elected officials of the state or local governments who:
 - (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or
 - (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;
- (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;
- (c) employees directly appointed by the governor;
- (d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;
- (e) the chief administrative officer of any city or county;
- (f) employees of county hospitals or rest homes.

(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service under this subsection (2)(b).

(C) (i) A MEMBER WHO IS A LOCAL ELECTED OFFICIAL AND AN ACTIVE MEMBER ON [THE EFFECTIVE DATE OF THIS ACT] AND WHO IS WORKING IN THE MEMBER'S ELECTED POSITION LESS THAN 960 HOURS IN A CALENDAR YEAR MAY, UNTIL JANUARY 1, 2004, DECLINE OPTIONAL MEMBERSHIP WITH RESPECT TO THE MEMBER'S ELECTED POSITION.

(ii) A MEMBER WHO AFTER [THE EFFECTIVE DATE OF THIS ACT] IS ELECTED TO A LOCAL GOVERNMENT POSITION IN WHICH THE MEMBER WORKS LESS THAN 960 HOURS IN A CALENDAR YEAR MAY, WITHIN 180 DAYS OF BEING ELECTED, DECLINE OPTIONAL MEMBERSHIP WITH RESPECT TO THE MEMBER'S ELECTED POSITION.

(3) If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The employer shall file the statement with the board and retain a copy of the statement. An employee who declines optional membership may not receive membership credit or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

- (a) a member who was an active member before the employment remains an active member;
- (b) a member who was an inactive member before the employment becomes an active member; and
- (c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(6) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more, an employee who was a member in an optional membership position is reemployed in the same

position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."

Section 2. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment -- reduction of service retirement benefit upon exceeding limits -- ~~exception exceptions~~. (1) A retired member under 65 years of age who is receiving a service retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) ~~A retired member 70 1/2 years of age or older~~ The following members who returns return to employment covered by the retirement system ~~is~~ are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member 70 1/2 years of age or older; or

(b) an elected official in a covered position who does not elect to be an active member of the system
DECLINES OPTIONAL MEMBERSHIP as provided in 19-3-412(1)(a)(ii)."

SECTION 3. SECTION 19-20-302, MCA, IS AMENDED TO READ:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

- (a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;
- (b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;
- (c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;
- (d) a person who is an administrative officer or a member of the instructional staff of the board of public education; ~~and~~
- (e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction; and
- (f) a person elected to the office of county superintendent of schools.

(2) A ~~person~~ retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

- (3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:
 - (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and
 - (b) have the compensation for the person's creditable service totally paid by an employer.
- (4) (a) A substitute teacher or a part-time teacher's aide:
 - (i) shall file an irrevocable written election determining whether to become an active member of the

retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.

(e) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(f) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-804.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom."

SECTION 4. SECTION 19-20-804, MCA, IS AMENDED TO READ:

"19-20-804. Allowance for service retirement. (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) Except as provided in subsection (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) one-third of the sum of the member's average final compensation; or

(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) On July 1 of each year following the member's retirement effective date, the maximum earning amount allowed under subsection (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) Except as provided in subsection (5), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.

(b) 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) 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) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (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.

(d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).

(5) 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."

NEW SECTION. SECTION 5. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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