

SENATE BILL NO. 532
INTRODUCED BY S. GALLUS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; INCLUDING OVERTIME PAYMENTS IN THE DEFINITION OF COMPENSATION; AUTHORIZING PARTICIPATION IN THE RETIREMENT SYSTEM BY CERTAIN FIRE DEPARTMENTS; AUTHORIZING A RETURN TO SERVICE FOR A LIMITED NUMBER OF HOURS WITHOUT LOSS OF BENEFITS; PROVIDING A DEFERRED RETIREMENT OPTION PLAN; AMENDING SECTIONS 19-13-104, 19-13-210, 19-13-301, AND 19-13-604, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding ~~overtime~~, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding ~~overtime~~, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) ~~overtime~~, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; and

(ii) maintenance, allowances, and expenses.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201.

(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards provided in 7-33-4106.

(7) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member reaches both 50 years of age or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 2. Section 19-13-210, MCA, is amended to read:

"19-13-210. Participation in retirement system. (1) Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.

(2) Firefighters hired by the Montana air national guard on or after October 1, 2001, or on or after the date of the execution of an agreement between the department of military affairs and the board, whichever is later, shall participate in the retirement system.

(3) (a) A city that is not covered under subsection (1) and that has full-paid firefighters covered by the public employees' retirement system and any rural fire district department with full-paid firefighters covered by the public employees' retirement system may elect to be covered under the retirement system as provided in 19-13-211.

(b) An election by a city fire department or a rural fire department to be covered by the retirement system must be made through adoption of a resolution stating that the governing body of the city or the fire district agrees to be bound by the provisions of the retirement system. The resolution must specify the effective date of the department's election. The provisions of the retirement system become applicable on the effective date specified in the adopted resolution. A certified copy of the resolution must be provided to the board.

(4) The following are the terms and conditions of an election by a fire department to join the retirement system pursuant to subsection (3):

(a) Each firefighter employed by the fire department before the effective date of the department's election must be given 180 days from the effective date of the department's election to make an individual, one-time, irrevocable election to remain in the public employees' retirement system or to join the retirement system. Failure to make an election under this subsection (4)(a) must be considered an election to remain in the public employees' retirement system.

(b) Each firefighter employed by the fire department who is hired on or after the effective date of the department's election must be covered by the retirement system.

(c) A firefighter electing to join the retirement system may retain prior service in the public employees' retirement system or qualify the prior service in the retirement system as provided for in 19-2-715."

Section 3. Section 19-13-301, MCA, is amended to read:

"19-13-301. Active membership -- inactive vested member -- inactive nonvested member. (1)

Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:

- (a) on the first day of the firefighter's service with an employer;
- (b) on July 1, 1981, if the firefighter is employed by an employer on that date; or
- (c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the

effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board within 6 months of becoming a part-paid firefighter ~~or March 21, 2001, whichever is later.~~

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

- (a) the date on which the member ceases service with an employer;
- (b) the 31st day of an approved absence from active duty with an employer; or
- (c) the date on which the member ceases to be employed because of a reduction of the number of

firefighters in the fire department as provided in 7-33-4125.

(5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system.

(8) A retired member who is receiving a service retirement benefit or early 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."

Section 4. Section 19-13-604, MCA, is amended to read:

"19-13-604. State contribution. The state shall make its contributions from the general fund. The general fund contributions must be made annually after the end of each fiscal year but no later than November 1. The board shall notify the state auditor by September 1 of each fiscal year of the annual compensation, excluding ~~overtime~~, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding fiscal year. The state's contribution is 32.61% of this total compensation. The contributions are statutorily appropriated, as provided in 17-7-502."

NEW SECTION. **Section 5. Short title.** [Sections 5 through 12] may be cited as the deferred retirement option plan or DROP.

NEW SECTION. **Section 6. Definitions.** Unless the context requires otherwise, as used in [sections 5 through 12], the following definitions apply:

- (1) "DROP" means the deferred retirement option plan established pursuant to [sections 5 through 12].
- (2) "DROP accrual" means the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated service and retired, multiplied by each month of the DROP period that the participant completes, plus interest.
- (3) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in [sections 5 through 12].
- (4) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to [section 8].
- (5) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated service and retired.
- (6) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to [sections 5 through 12].

NEW SECTION. **Section 7. Deferred retirement option plan established -- compliance with federal**

law -- rulemaking. (1) The board shall establish a DROP for eligible members of the retirement system who elect to participate.

(2) The board shall administer the DROP in compliance with the Internal Revenue Code and the applicable rules, regulations, and determinations of the internal revenue service.

(3) The board may adopt rules to administer [sections 5 through 12].

NEW SECTION. Section 8. Eligibility -- participation criteria -- membership status -- service interruptions. (1) Any member eligible to retire under 19-13-701(1) is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or other temporary absence from work and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period.

(6) Subject to the provisions of this section, a member who was eligible to retire under 19-13-701(1) on or after July 1, 2006, but before July 1, 2007, and who elects to participate in the DROP on or before October 1, 2007, may include within the member's DROP period any time during the period beginning July 1, 2006, and ending June 30, 2007.

NEW SECTION. Section 9. Retirement system contributions -- benefit payments to individual accounts -- investment returns. (1) During a member's participation in the DROP, state contributions under 19-13-604, employer contributions under 19-13-605, and member contributions under 19-13-601 must continue to be made to the retirement system.

(2) For each DROP participant, the board shall calculate a DROP accrual.

NEW SECTION. Section 10. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to [section 12], the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit and the member's accumulated contributions minus

any benefits paid from the member's account, including monthly DROP accruals.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced.

NEW SECTION. Section 11. Employment and benefits after DROP period. (1) Except as otherwise provided in this section, if a member continues employment in a covered position after the DROP period ends, the board shall consider the member newly hired as of the date the DROP period ended.

(2) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-13-604, employer contributions under 19-13-605, and member contributions under 19-13-601 must continue to be made to the retirement system.

(3) A member who, after the end of the DROP period, continues employment in a covered position:

(a) is immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) is, upon terminating service, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter;

(ii) a service retirement benefit based on the member's service credit and final average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter; and

(iii) the member's DROP benefit.

NEW SECTION. Section 12. Distribution of DROP benefit. (1) Upon termination of service, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another eligible retirement plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 and the Internal Revenue Code.

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this

section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced.

NEW SECTION. **Section 13. Codification instruction.** [Sections 5 through 12] are intended to be codified as an integral part of Title 19, chapter 13, and the provisions of Title 19, chapter 13, apply to [sections 5 through 12].

NEW SECTION. **Section 14. Effective date.** [This act] is effective July 1, 2007.

NEW SECTION. **Section 15. Retroactive applicability.** [Sections 5 through 12] apply retroactively, within the meaning of 1-2-109, to active members of the firefighters' unified retirement system who were eligible to retire under 19-13-701(1) on or after July 1, 2006, but before July 1, 2007.

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