

HOUSE BILL NO. 54

INTRODUCED BY P. INGRAHAM

BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ADMINISTRATIVE AND FEDERAL TAX  
6 QUALIFICATION PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING DEFINITIONS  
7 AND TERMINOLOGY RELATED TO TERMINATION OF EMPLOYMENT, POSITIONS REPORTABLE TO THE  
8 RETIREMENT SYSTEMS, RETIREMENT STATUS, AND SERVICE CREDIT; SPECIFYING JURISDICTION AND  
9 VENUE FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS; CLARIFYING TERMINATION PAY  
10 PROCEDURES; REVISING CERTAIN NORMAL RETIREMENT AGE AND NONFORFEITABILITY OF BENEFIT  
11 PROVISIONS AS REQUIRED FOR FEDERAL TAX QUALIFICATION; AMENDING SECTIONS 19-20-101,  
12 19-20-201, 19-20-409, 19-20-716, 19-20-733, 19-20-801, 19-20-802, 19-20-805, AND 19-20-1101, MCA; AND  
13 PROVIDING AN EFFECTIVE DATE."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
17 **Section 1.** Section 19-20-101, MCA, is amended to read:

18 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the  
19 following definitions apply:

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

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

26 (3) "Average final compensation" means a member's highest average earned compensation in ~~in 3~~  
27 consecutive years, determined pursuant to 19-20-805, on which all required contributions have been made.

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

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

1 retirement allowance.

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

3 (7) "Date of termination" or "termination date" means the last date on which a member performed service  
4 in a position reportable to the retirement system.

5 ~~(7)(8)~~ (a) "Earned compensation" means, except as limited by subsections ~~(7)(b)~~ ~~(8)(b)~~ and ~~(7)(c)~~ ~~(8)(c)~~  
6 or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before  
7 any pretax deductions allowed under the Internal Revenue Code are deducted.

8 (b) Earned compensation does not include:

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

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

12 (A) professional membership dues;

13 (B) maintenance;

14 (C) housing;

15 (D) day care;

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

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

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

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

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

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

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

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

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

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

29 ~~(8)(9)~~ "Employer" means:

30 (a) the state of Montana;

- 1 (b) a public school district, as provided in 20-6-101 and 20-6-701;  
 2 (c) the office of public instruction;  
 3 (d) the board of public education;  
 4 (e) an education cooperative;  
 5 (f) the Montana school for the deaf and blind, as described in 20-8-101;  
 6 (g) the Montana youth challenge program, as defined in 10-1-101;  
 7 (h) a state youth correctional facility, as defined in 41-5-103;  
 8 (i) the Montana university system;  
 9 (j) a community college; or  
 10 (k) any other agency, ~~or political subdivision, or instrumentality~~ of the state that employs a person who  
 11 is designated a member of the retirement system pursuant to 19-20-302.

12 ~~(9)~~(10) "Full-time service" means service that is:

- 13 (a) at least 180 days in a fiscal year;  
 14 (b) at least 140 hours a month during at least 9 months in a fiscal year; or  
 15 (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board  
 16 and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a  
 17 school district operating under an alternative school calendar must be applied uniformly to all employees of the  
 18 school district required to be reported to the retirement system.

19 ~~(10)~~(11) "Internal Revenue Code" has the meaning provided in 15-30-2101.

20 ~~(11)~~(12) "Joint annuitant" means the one person that a retired member who has elected an optional  
 21 allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired  
 22 member.

23 ~~(12)~~(13) "Member" means a person who has an individual account in the annuity savings account. An  
 24 active member is a person included under the provisions of 19-20-302. An inactive member is a person included  
 25 under the provisions of 19-20-303.

26 ~~(13)~~(14) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the  
 27 lifetime of the retired member.

28 ~~(14)~~(15) "Normal retirement age" means an age no earlier than 55 ~~60~~ years of age, ~~with the right to~~  
 29 ~~receive immediate retirement benefits without an actuarial reduction in the benefits.~~

30 ~~(15)~~(16) "Part-time service" means service that is not full-time service. Part-time service must be credited

1 in the proportion that the actual time worked compares to full-time service.

2 (17) "Position reportable to the retirement system" means a position in which an individual performs  
 3 duties that would entitle the person to active membership in the retirement system under the provisions of  
 4 19-20-302.

5 ~~(16)~~(18) "Regular interest" means interest at a rate set by the retirement board in accordance with  
 6 19-20-501(2).

7 ~~(17)~~(19) "Retired", "retired member", or "retiree" means a person who ~~has terminated employment that~~  
 8 ~~qualifies the person for membership and who has received at least one monthly retirement benefit paid pursuant~~  
 9 ~~to this chapter~~ is considered in retired member status under the provisions of [section 9].

10 ~~(18)~~(20) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired  
 11 member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

12 ~~(19)~~(21) "Retirement board" or "board" means the retirement system's governing board provided for in  
 13 2-15-1010.

14 ~~(20)~~(22) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of  
 15 Montana provided for in 19-20-102.

16 ~~(24)~~(23) "Service" means the performance of duties that would entitle the person to active membership  
 17 in the retirement system under the provisions of 19-20-302.

18 ~~(22)~~(24) "Termination" or "terminate" means that the ~~member has severed the employment relationship~~  
 19 ~~with between the member and~~ the member's employer ~~and that all, if any, payments due upon termination of~~  
 20 ~~employment, including but not limited to accrued sick and annual leave balances, have been paid to the member~~  
 21 has been terminated as required in [section 9].

22 ~~(23)~~(25) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay,  
 23 amounts provided under a window or early retirement incentive plan, or other payments contingent on the  
 24 employee terminating employment.

25 (b) Termination pay does not include:

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

28 (ii) amounts that are payable to a member from a plan for the deferral of compensation under section  
 29 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

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

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

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

5

6 **Section 2.** Section 19-20-201, MCA, is amended to read:

7 **"19-20-201. Administration by retirement board -- jurisdiction and venue for judicial review. (1)**

8 The retirement board shall administer and operate the retirement system within the limitations prescribed by this  
9 chapter, and it is the duty of the retirement board to:

- 10 (a) establish rules necessary for the proper administration and operation of the retirement system;
- 11 (b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;
- 12 (c) keep a record of all its proceedings, which must be open to public inspection;
- 13 (d) submit a report to the office of budget and program planning detailing the fiscal transactions for the  
14 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of  
15 the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement  
16 system;
- 17 (e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the  
18 retirement system and for checking the experience of the retirement system;
- 19 (f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an  
20 analysis of how market performance is affecting the actuarial funding of the retirement system;
- 21 (g) prescribe a form for membership application that will provide adequate and necessary information  
22 for the proper operation of the retirement system;
- 23 (h) annually determine the rate of regular interest as prescribed in 19-20-501;
- 24 (i) establish and maintain the funds of the retirement system in accordance with the provisions of part  
25 6 of this chapter; and
- 26 (j) perform other duties and functions as are required to properly administer and operate the retirement  
27 system.

28 (2) In discharging its duties, the board, or an authorized representative of the board, may conduct  
29 hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue  
30 subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence,

1 memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

2 (3) The board may send retirement-related material to employers and the campuses of the Montana  
3 university system for delivery to employees. To facilitate distribution, employers and those campuses shall each  
4 provide the board with a point of contact who is responsible for distribution of the material provided by the board.

5 (4) The board shall make available to the legislature pursuant to 5-11-210 copies of the annual actuarial  
6 valuation and report required pursuant to subsections (1)(d) and (1)(f).

7 (5) Jurisdiction and venue for judicial review of the board's final administrative decisions is the first  
8 judicial district, Lewis and Clark County, unless otherwise stipulated by the parties."

9

10 **Section 3.** Section 19-20-409, MCA, is amended to read:

11 **"19-20-409. Transfer of service credits and contributions from public employees' retirement**

12 **system.** (1) An active member may at any time before retirement file a written application with the retirement  
13 board to purchase all of the member's previous ~~creditable~~ service credit in the public employees' retirement  
14 system. The amount that must be paid to the retirement system to purchase this service under this section is the  
15 sum of subsections (2) and (3).

16 (2) The public employees' retirement system shall transfer to the teachers' retirement system an amount  
17 equal to 72% of the amount paid by the member.

18 (3) The member shall pay either directly or by transferring contributions on account with the public  
19 employees' retirement system an amount equal to the member's accumulated contributions at the time that active  
20 membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until  
21 a transfer is received by the retirement system, based on the interest tables in use by the public employees'  
22 retirement system.

23 (4) A member who purchases service from the public employees' retirement system in the teachers'  
24 retirement system must have completed 5 years of membership service in the teachers' retirement system to  
25 receive credit or purchase military service, out-of-state service, employment while on leave, and private school  
26 employment.

27 (5) The retirement board shall determine the service credits that may be transferred.

28 (6) If an active member who also has ~~creditable~~ service credit in the public employees' retirement system  
29 before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers'  
30 retirement system and if the member's service credits from both systems, when combined, entitle the member's

1 beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system.  
 2 Before payment of the death benefit, the public employees' retirement board must transfer to the teachers'  
 3 retirement system the contributions necessary to purchase this service in the teachers' retirement system as  
 4 provided in subsections (2) and (3).

5 (7) (a) If the teachers' retirement board determines that an individual's membership was erroneously  
 6 classified and reported to the public employees' retirement system, the public employees' retirement board shall  
 7 transfer to the teachers' retirement system the member's accumulated contributions and service, together with  
 8 employer contributions plus interest.

9 (b) For the period of time that the employer contributions are held by the public employees' retirement  
 10 system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the  
 11 short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer  
 12 request.

13 (c) Any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, plus  
 14 interest, are the liability of the employee and the employing entity where the error occurred.

15 (8) A member who participated in the public employees' retirement system defined contribution plan  
 16 provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a participant  
 17 in the defined contribution plan if:

18 (a) the member has 5 years of membership service and has completed at least 1 full year in the teachers'  
 19 retirement system following the member's public employees' retirement system service;

20 (b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member  
 21 contributes the actuarial cost of the service based on the most recent valuation of the system; and

22 (c) the member has withdrawn the member's money in the member's public employees' retirement  
 23 system defined contribution plan account or has rolled over the amount required to purchase service in  
 24 accordance with this subsection (8).

25 (9) Creditable service purchased under subsection (8) must be determined according to the laws and  
 26 rules governing service credit in the public employees' retirement system."  
 27

28 **Section 4.** Section 19-20-716, MCA, is amended to read:

29 **"19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of  
 30 retirement, the member shall select, subject to subsections ~~(5)~~ (4) and ~~(6)~~ (5), ~~by signing a binding, irrevocable~~

1 ~~written election at least 90 days before the member's termination date~~, one of the following options:

2 (a) Option 1--The member may use the total termination pay in the calculation of the member's average  
3 final compensation. The member and the employer shall pay contributions to the retirement system as determined  
4 by the board to adequately compensate the system for the additional retirement benefit. The contributions must  
5 be made at the time of termination.

6 (b) Option 2--The member may use a yearly amount of the total termination pay added to each of the  
7 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine  
8 the amount of termination pay used in the calculation of average final compensation, termination pay must be  
9 divided by the total number of years of creditable service to determine a yearly amount. The member and the  
10 employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and  
11 19-20-605(1). For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount  
12 equal to the termination pay multiplied by the rate established in 19-20-607 that would have been payable by the  
13 state as a supplemental contribution. The contributions must be made at the time of termination.

14 (c) Option 3--The member may exclude the termination pay from the average final compensation. A  
15 contribution is not required of either the member or the employer.

16 (2) ~~A~~ If a member signs a binding, irrevocable written election required by this section must be signed  
17 by both the member and the employer for either an option 1 or option 2 benefit at least 90 days prior to the  
18 member's termination date, the employee contributions required by this section must be picked up by the  
19 employer. The binding, irrevocable written election required by this subsection (2) must be signed by both the  
20 member and the employer and must contain statements with regard to the contributions required to be made by  
21 the member under subsections (1)(a) and (1)(b) that:

22 (a) the contributions being picked up, although designated as member contributions, are being paid by  
23 the employer directly to the system in lieu of contributions by the member and that the picked up contributions  
24 are paid from the same source as compensation is paid;

25 (b) the member may not choose to directly receive the amounts deducted from the member's termination  
26 pay instead of having them paid by the employer to the system;

27 (c) the member may not prepay any portion of the contributions; and

28 (d) the effective date of the pickup is the date that the irrevocable written election is signed by both the  
29 member and employer. The effective date must be at least 90 days prior to ~~the date of~~ the member's date of  
30 termination. The pickup does not apply to a contribution made before the effective date of the pickup.



1           ~~(3)~~ For the purpose of this section, the date of termination is the last day the member is performing any  
2 services covered under this chapter.

3           ~~(4)~~(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

4           (a) deducted from the portion of termination pay that:

5           (i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without  
6 regard to the wage base limitation; and

7           (ii) can be included in the member's gross income for federal tax purposes; and

8           (b) picked up by the employer, except as provided in subsections ~~(5)~~ (4) and ~~(6)~~ (5).

9           ~~(5)~~(4) A member's contributions greater than the total amount of the member's termination pay may not  
10 be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

11           ~~(6)~~(5) If a member and the member's employer fail to sign the written election within the time period  
12 required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b)  
13 on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be  
14 picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."  
15

16           **Section 5.** Section 19-20-733, MCA, is amended to read:

17           **"19-20-733. Resumption of employment by retired member -- suspension of benefits.** (1) [Except  
18 as provided in 19-20-732,] if a retired member returns to employment in a position covered by the retirement  
19 system and becomes an active contributing member, benefits must be suspended until the member terminates  
20 all employment and applies to have benefits reinstated.

21           (2) ~~Except as provided in subsection (4), upon~~ Upon termination and retirement of a previously retired  
22 member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

23           (a) if the member earned less than 1 year of creditable service, the original benefit and retirement option  
24 that the member was receiving at the time of suspension of benefits must be reinstated beginning either the first  
25 of the month following termination or on July 1 following the date on which the retired member was reemployed,  
26 whichever is later; or

27           (b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated  
28 under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802  
29 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated  
30 at the time of the member's previous retirement, plus any service credit accumulated subsequent to

1 reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement  
2 received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were  
3 suspended.

4 (3) (a) Except as provided in subsection ~~(4)~~ (3)(c), upon the subsequent retirement of a formerly retired  
5 member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

6 (i) at least 3 years of membership service following suspension of benefits, the member is entitled to  
7 resume receiving the suspended benefit in accordance with the retirement benefit option and joint annuitant  
8 previously selected, plus an additional benefit based upon the new creditable service and compensation earned.  
9 The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service  
10 retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be  
11 paid under the same retirement benefit option and with the same joint annuitant originally elected.

12 (ii) less than 3 years of membership service following suspension of benefits, the member is entitled to  
13 resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus  
14 a refund of the employee contributions contributed after the member was reinstated to active service, plus  
15 interest.

16 (b) If a member dies during the period of reemployment following an initial retirement, the member must  
17 be considered as retiring on the day preceding the date of death and benefits must be determined according to  
18 the following:

19 (i) If the member elected the normal form benefit prior to reemployment, the member's designated  
20 beneficiary must receive an amount equal to the member's remaining accumulated contributions on deposit.

21 (ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits  
22 due are payable in accordance with the terms of the original option elected and this subsection (3).

23 ~~(4) If a retired member who has not attained normal retirement age is reemployed with the same  
24 employer within 30 days from the member's effective date of retirement or if that member is guaranteed  
25 reemployment with the same employer, the member must be considered to have continued in the status of an  
26 active member and not to have separated from service. Any retirement allowance payments received by the  
27 member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement  
28 allowance must be canceled.~~

29 (c) If the joint annuitant nominated prior to the member's reemployment under retirement option A, B,  
30 or C dies prior to the member rereading, the member will be given the option to select either the normal form

1 retirement benefit or a retirement option as provided in 19-20-702. (Bracketed language terminates June 30,  
2 2015--sec. 5, Ch. 129, L. 2009.)"

3

4 **Section 6.** Section 19-20-801, MCA, is amended to read:

5 **"19-20-801. Eligibility for service retirement.** (1) A member who has at least 5 full years of creditable  
6 service and who has attained the age of 60 or has been credited with full-time or part-time creditable service in  
7 25 or more years may retire from service if the member has terminated employment in all positions ~~from which~~  
8 ~~the member is eligible to retire~~ reportable to the retirement system and files with the retirement board a written  
9 application.

10 (2) A vested member who has attained normal retirement age has a nonforfeitable right to the benefits  
11 accrued and payable under the provisions of this chapter, subject to the member's right to withdraw the member's  
12 accumulated contributions under 19-20-603."

13

14 **Section 7.** Section 19-20-802, MCA, is amended to read:

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

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

22

23 **Section 8.** Section 19-20-805, MCA, is amended to read:

24 **"19-20-805. Calculation of average final compensation.** (1) Except as limited by this section, average  
25 final compensation is calculated by averaging the earned compensation paid to a member in 3 consecutive fiscal  
26 years of full-time service that yields the highest average.

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

1 that the member would have earned, the compensation reported must be divided by the part-time service credited  
2 to the member's account.

3 (3) (a) Subject to subsection (3)(b), if a member has transferred service from the public employees'  
4 retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service  
5 reported to the teachers' retirement system, the member's average final compensation must be calculated as  
6 follows:

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

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

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

21 (4) (a) If the benefits excluded from earned compensation pursuant to 19-20-101(7)(b)(8)(b) have been  
22 converted by an employer to earned compensation for all members and have been continuously reported as  
23 earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted  
24 benefit amounts must be included in the calculation of average final compensation.

25 (b) If benefits have been converted to earned compensation as described in subsection (4)(a) but have  
26 been reported as earned compensation for less than 5 fiscal years or if the member has been given the option  
27 to have benefits converted to earned compensation, any converted benefits reported as earned compensation  
28 in the 3 years used to calculate average final compensation may be included in the calculation of average final  
29 compensation only as termination pay under 19-20-716(1)(b)."  
30

1            **NEW SECTION. Section 9. Termination of employment -- retired member status -- certification**

2            **of termination date.** (1) A member shall terminate employment in all positions reportable to the retirement  
3 system to be eligible for service retirement under 19-20-801, early retirement under 19-20-802, disability  
4 retirement under 19-20-901, or withdrawal of the member's accumulated contributions under 19-20-603.

5            (2) Except as provided in subsections (3) and (4), a member has terminated employment in a position  
6 reportable to the retirement system when the employment relationship with the employer has been fully and  
7 completely severed and all, if any, payments due upon termination of employment, including but not limited to  
8 payment of accrued sick and annual leave balances, have been paid to the member.

9            (3) (a) A member who has not attained normal retirement age has not terminated employment in a  
10 position reportable to the retirement system if the member and the employer have a prearranged agreement for  
11 postretirement service.

12            (b) For purposes of this subsection (3), a "prearranged agreement for postretirement service" means  
13 an oral or written agreement between a member and an employer made before the member attains retired  
14 member status for the member to provide service or perform work, in any capacity, on behalf of the employer in  
15 the future.

16            (4) A member has not terminated employment in a position reportable to the retirement system if the  
17 member provides any service or performs any work, in any capacity, on behalf of the employer after the certified  
18 date of termination but prior to attaining retired member status.

19            (5) A member must be in retired member status before the member is eligible to be employed as a  
20 working retiree pursuant to 19-20-731. Service provided by a member in a position reportable to the retirement  
21 system before the member attains retired member status is service provided as an active member, and the  
22 member shall terminate from the position to be eligible for retirement benefits.

23            (6) (a) A member attains retired member status when the member has terminated employment in all  
24 positions reportable to the retirement system and has actually received at least one monthly retirement benefit  
25 payment.

26            (b) A retired member who returns to active member status for any reason ceases to be in retired member  
27 status until the member again applies for a retirement benefit and actually receives at least one monthly  
28 retirement benefit payment.

29            (7) (a) Unless waived by the board, the member and the employer for each position from which the  
30 member is terminating or has terminated must certify on a form provided by the retirement system the member's

1 date of termination and whether there is a prearranged agreement for postretirement service.

2 (b) The certification obligation of the member and the employer is ongoing and must be immediately  
3 updated if the information previously provided was in error or has changed.

4

5 **Section 10.** Section 19-20-1101, MCA, is amended to read:

6 **"19-20-1101. Withholding of group insurance premium from retirement allowance.** (1) A retired  
7 member who is a participant in an approved employer-sponsored group insurance plan may elect to have the  
8 monthly premium for the group insurance withheld from the member's retirement allowance by the retirement  
9 system. Premiums withheld may be paid directly to the insurance carrier or employer of record at the time of  
10 retirement.

11 (2) Upon the death of a retired member, the joint annuitant or beneficiary, if eligible, may elect to continue  
12 to have the monthly insurance premium withheld from a monthly retirement benefit and paid directly to the  
13 employer or the employer's insurance carrier.

14 (3) Each month, using the retirement system's online employer reporting system, the employer shall  
15 verify commence withholding, cease withholding, or process any necessary adjustments to the premium amount  
16 on behalf of the benefit recipient, including verification that all authorized insurance deductions are correct, and

17 (4) The employer shall notify the ~~retired member~~ benefit recipient of any changes related to the  
18 premiums, including any changes to the premium amount, prior to the effective date of the change."

19

20 NEW SECTION. Section 11. Codification instruction. [Section 9] is intended to be codified as an  
21 integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to [section 9].

22

23 NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 2013.

24

- END -