

HOUSE BILL NO. 78

INTRODUCED BY K. REGIER

BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING BREAK-IN-SERVICE REQUIREMENTS FOR POSTRETIREMENT EMPLOYMENT IN A POSITION REPORTABLE TO THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-20-731 AND 19-20-733, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

**Section 1.** Section 19-20-731, MCA, is amended to read:

**"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits -- reporting obligation of retired member.** (1) (a) Except as [provided in 19-20-732 or as] otherwise provided in this section, a retired member may be employed by an employer in a position that is reportable to the retirement system and may earn, without an adjustment 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.

(b) The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:

- (i) health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer;
- (ii) the value of housing provided by the employer to the retired member;
- (iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;
- (iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and



- 1 (v) payroll taxes paid by the employer on behalf of the retired member.
- 2 (c) A member applying for a retirement allowance or resumption or recalculation of a retirement  
3 allowance based on a termination date of January 1, 2014, or later is required to complete the break-in-service  
4 period set forth in [section 2] before the retired member may be employed in a position reportable to the  
5 retirement system.
- 6 (2) On July 1 of each year following the member's retirement effective date, the maximum that a retired  
7 member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index  
8 increase for urban wage earners compiled by the bureau of labor statistics of the United States department of  
9 labor or its successor agency in the preceding calendar year.
- 10 (3) [Except as provided in 19-20-732,] the retirement benefit of a retired member:
- 11 (a) employed and earning more than allowed by subsections (1) and (2) must be temporarily reduced  
12 by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon  
13 as practical after the excess earnings have been reported to the retirement system by the employer. The  
14 retirement benefit must be suspended if the retired member's earnings over the maximum allowed exceed the  
15 gross monthly benefit amount.
- 16 (b) employed in one or more part-time positions under one or more contracts providing for an aggregate  
17 payment of a total amount that is more than the maximum allowed must be suspended effective on the date on  
18 which the retired member returns to employment.
- 19 (4) For purposes of this section, the term "employed in a position that is reportable to the retirement  
20 system" includes any work performed or service provided by a retired member to or on behalf of an employer,  
21 including but not limited to work performed or service provided through a professional employer arrangement,  
22 an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.
- 23 (5) For purposes of this section, the employment status and maximum compensation of a retired member  
24 who is employed in more than one position or under more than one contract, whether with one employer or more  
25 than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable  
26 to the retirement system in which the retired member is employed.
- 27 (6) Within 30 days of the date of the execution of an agreement for the employment of a retired member  
28 or of the first date on which the retired member provides services if no agreement is entered into, the retired  
29 member shall provide written notice of the postretirement employment to the retirement system.
- 30 (7) For purposes of this section, if a retired member is employed by an employer in a position that is

1 reportable to the retirement system and the retired member is concurrently working for the employer in another  
2 position that is not reportable to the system, the position that is not reportable is considered to be part of the  
3 position that is reportable to the retirement system. All earnings of the retired member that are generated by these  
4 positions are reportable to the retirement system.

5 (8) The retirement allowance of any retired member who is employed in a position and who elects to  
6 participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member  
7 is no longer employed in the position and is no longer participating in the optional retirement program. (Bracketed  
8 language terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"

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10 **NEW SECTION. Section 2. Break-in-service requirements.** (1) Except as provided in [19-20-732 and]  
11 subsection (2), a retired member who first applies for retirement benefits or applies for resumed or recalculated  
12 retirement benefits pursuant to 19-20-733 based on a date of termination of January 1, 2014, or later may not  
13 be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a  
14 break in service of 180 calendar days commencing on the first day following the member's date of termination.

15 (2) A retired member may be employed by an employer during the break-in-service period only if:

16 (a) the retired member:

17 (i) is employed as a substitute classroom teacher to carry on the duties of a regular, licensed teacher  
18 who is temporarily absent;

19 (ii) performs the service after attaining retired member status; and

20 (iii) performs the service for no more than 30 days during the break-in-service period; or

21 (b) the retired member continues employment in a position in which the retired member was  
22 appropriately reported to the public employees' retirement system prior to and at the time of retirement with the  
23 teachers' retirement system.

24 (3) If a retired member is employed in a position reportable to the retirement system in violation of this  
25 section:

26 (a) the retired member must be returned to active member status with the retirement system retroactive  
27 to the member's date of retirement or the date of resumption of retirement benefits, whichever is later, and the  
28 member's retirement benefits must be terminated;

29 (b) the member shall repay all retirement benefits received in violation of this section, plus interest at the  
30 actuarially assumed rate; and

1 (c) the member and the employer shall pay to the retirement system contributions on all earned  
 2 compensation paid to the member for service performed during the break-in-service period, plus interest at the  
 3 actuarially assumed rate.

4 (4) For purposes of this section, the term "employed in a position reportable to the retirement system"  
 5 includes any work performed or service provided by a retired member to or on behalf of an employer, including  
 6 but not limited to work performed or service provided through a professional employer arrangement, an employee  
 7 leasing arrangement, as a temporary service contractor, or as an independent contractor.

8

9 **Section 3.** Section 19-20-733, MCA, is amended to read:

10 **"19-20-733. Resumption of employment by retired member -- suspension of benefits.** ~~(†)~~ [Except  
 11 as provided in 19-20-732, and] subject to [section 2], the following provisions apply:

12 (1) ~~if~~ If a retired member returns to employment in a position covered by the retirement system and  
 13 becomes an active contributing member, benefits must be suspended until the member terminates all  
 14 employment and applies to have benefits reinstated.

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

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

21 (b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated  
 22 under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802  
 23 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated  
 24 at the time of the member's previous retirement, plus any service credit accumulated subsequent to  
 25 reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement  
 26 received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were  
 27 suspended.

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

30 ~~(†)(a)~~ (a) at least 3 years of membership service following suspension of benefits, the member is entitled to

1 resume receiving the suspended benefit in accordance with the retirement benefit option and joint annuitant  
 2 previously selected, plus an additional benefit based upon the new creditable service and compensation earned.  
 3 The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service  
 4 retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be  
 5 paid under the same retirement benefit option and with the same joint annuitant originally elected.

6 ~~(i)(b)~~ less than 3 years of membership service following suspension of benefits, the member is entitled  
 7 to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected,  
 8 plus a refund of the employee contributions contributed after the member was reinstated to active service, plus  
 9 interest.

10 ~~(b)(4)~~ If a member dies during the period of reemployment following an initial retirement, the member  
 11 must be considered as retiring on the day preceding the date of death and benefits must be determined according  
 12 to the following:

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

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

17 ~~(4)~~ ~~If a retired member who has not attained normal retirement age is reemployed with the same~~  
 18 ~~employer within 30 days from the member's effective date of retirement or if that member is guaranteed~~  
 19 ~~reemployment with the same employer, the member must be considered to have continued in the status of an~~  
 20 ~~active member and not to have separated from service. Any retirement allowance payments received by the~~  
 21 ~~member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement~~  
 22 ~~allowance must be canceled. (Bracketed language terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"~~

23  
 24 NEW SECTION. **Section 4. Codification instruction.** [Section 2] is intended to be codified as an  
 25 integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 2].

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 27 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2013.

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 29 NEW SECTION. **Section 6. Termination.** The bracketed language in [section 2] terminates June 30,  
 30 2015.

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