

## 1 HOUSE BILL NO. 97

2 INTRODUCED BY F. WILMER

3 BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE COMPENSATION USED TO DETERMINE  
6 RETIREMENT BENEFITS IN CERTAIN PUBLIC RETIREMENT SYSTEMS; PLACING A CAP ON THE  
7 EARNINGS THAT MAY BE INCLUDED IN THE HIGHEST OR FINAL AVERAGE COMPENSATION USED TO  
8 DETERMINE A RETIREMENT BENEFIT UNDER THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL  
9 OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND  
10 FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; PROVIDING THAT ELECTIVE CONTRIBUTIONS FOR  
11 A CERTAIN HEALTH PLAN MAY NOT BE CONSIDERED COMPENSATION IN THE PUBLIC EMPLOYEES',  
12 JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS',  
13 MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING  
14 SECTIONS 19-2-303, 19-2-1005, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, AND 19-13-104,  
15 MCA; AND PROVIDING AN EFFECTIVE DATE."

16

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

18

19 **Section 1.** Section 19-2-303, MCA, is amended to read:20 **"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems  
21 subject to this chapter, the following definitions apply:22 (1) "Accumulated contributions" means the sum of all the regular and any additional contributions made  
23 by a member in a defined benefit plan, together with the regular interest on the contributions.24 (2) "Active member" means a member who is a paid employee of an employer, is making the required  
25 contributions, and is properly reported to the board for the most current reporting period.26 (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory  
27 manner to represent the present value of the benefits to be derived from the additional service to be credited  
28 based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary  
29 of the member.

30 (4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality

1 table and interest rate assumptions adopted by the board.

2 (5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined  
3 benefit retirement plan over the present value of future normal costs in that retirement plan.

4 (6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

5 (7) "Additional contributions" means contributions made by a member of a defined benefit plan to  
6 purchase various types of optional service credit as allowed by the applicable retirement plan.

7 (8) "Annuity" means:

8 (a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent  
9 of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are  
10 not subject to periodic or one-time increases; or

11 (b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

12 (9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee  
13 may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

14 (10) "Benefit" means:

15 (a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit  
16 payment provided by a defined benefit retirement plan; or

17 (b) a payment or distribution under the defined contribution retirement plan, including a disability payment  
18 under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased  
19 under 19-3-2124.

20 (11) "Board" means the public employees' retirement board provided for in 2-15-1009.

21 (12) "Contingent annuitant" means:

22 (a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing  
23 monthly benefit after the death of a retired member; or

24 (b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust  
25 that may receive a continuing monthly benefit after the death of a retired member.

26 (13) "Covered employment" means employment in a covered position.

27 (14) "Covered position" means a position in which the employee must be a member of the retirement  
28 system except as otherwise provided by law.

29 (15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement  
30 systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

1 (16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public  
2 employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and  
3 that is not a defined benefit plan.

4 (17) "Department" means the department of administration.

5 (18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit  
6 of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum  
7 payments, or benefit from a retirement account upon the death of the member or payment recipient, including  
8 annuities derived from the benefits or payments.

9 (19) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the  
10 distributee.

11 (20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by  
12 reason of physical or mental incapacity. The disability must be incurred while the member is an active member  
13 and must be one of permanent duration or of extended and uncertain duration, as determined by the board on  
14 the basis of competent medical opinion.

15 (21) "Distributee" means:

16 (a) a member;

17 (b) a member's surviving spouse;

18 (c) a member's spouse or former spouse who is the alternate payee under a family law order as defined  
19 in 19-2-907; or

20 (d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as  
21 defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

22 (22) "Early retirement benefit" means the retirement benefit payable to a member following early  
23 retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

24 (23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover  
25 distribution:

26 (a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C.  
27 408(a);

28 (b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C.  
29 408(b);

30 (c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

- 1 (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);
- 2 (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue  
3 Code, 26 U.S.C. 403(b);
- 4 (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26  
5 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of  
6 a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan  
7 from a plan under this title; or
- 8 (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26  
9 U.S.C. 408A.
- 10 (24) "Eligible rollover distribution":
- 11 (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the  
12 distributee, as provided in 19-2-1011;
- 13 (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former  
14 spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal  
15 Revenue Code, 26 U.S.C. 414(p).
- 16 (25) "Employee" means a person who is employed by an employer in any capacity and whose salary is  
17 being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying  
18 retirement contributions pursuant to 7-11-105.
- 19 (26) "Employer" means a governmental agency participating in a retirement system enumerated in  
20 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as  
21 responsible for paying retirement contributions pursuant to 7-11-105.
- 22 (27) "Essential elements of the position" means fundamental job duties. An element may be considered  
23 essential because of but not limited to the following factors:
- 24 (a) the position exists to perform the element;
- 25 (b) there are a limited number of employees to perform the element; or
- 26 (c) the element is highly specialized.
- 27 (28) "Excess earnings" means the difference, if any, between reported compensation and the limits  
28 provided in 19-2-1005(2) used to calculate a member's highest average compensation or final average  
29 compensation.
- 30 ~~(28)~~(29) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the

1 following June 30.

2 ~~(29)~~(30) "Inactive member" means a member who terminates service and does not retire or take a refund  
3 of the member's accumulated contributions.

4 ~~(30)~~(31) "Internal Revenue Code" has the meaning provided in 15-30-2101.

5 ~~(31)~~(32) "Member" means either:

6 (a) a person with accumulated contributions and service credited with a defined benefit retirement plan  
7 or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

8 (b) a person with a retirement account in the defined contribution plan.

9 ~~(32)~~(33) "Membership service" means the periods of service that are used to determine eligibility for  
10 retirement or other benefits.

11 ~~(33)~~(34) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost  
12 method required to fund accruing benefits for members of a defined benefit retirement plan during any year in  
13 the future.

14 (b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

15 ~~(34)~~(35) "Normal retirement age" means the age at which a member is eligible to immediately receive  
16 a retirement benefit based on the member's age, length of service, or both, as specified under the member's  
17 retirement system, without disability and without an actuarial or similar reduction in the benefit.

18 ~~(35)~~(36) "Pension" means benefit payments for life derived from contributions to a retirement plan made  
19 from state- or employer-controlled funds.

20 ~~(36)~~(37) "Pension trust fund" means a fund established to hold the contributions, income, and assets of  
21 a retirement system or plan in public trust.

22 ~~(37)~~(38) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll  
23 covered by the defined contribution plan members that is allocated to the public employees' retirement system's  
24 defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially  
25 fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member  
26 selection of the defined contribution plan.

27 ~~(38)~~(39) "Regular contributions" means contributions required from members under a retirement plan.

28 ~~(39)~~(40) "Regular interest" means interest at rates set from time to time by the board.

29 ~~(40)~~(41) "Retirement" or "retired" means the status of a member who has:

30 (a) terminated from service; and

1 (b) received and accepted a retirement benefit from a retirement plan.

2 ~~(41)~~(42) "Retirement account" means an individual account within the defined contribution retirement plan  
3 for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of  
4 the defined contribution plan or the member's beneficiary.

5 ~~(42)~~(43) "Retirement benefit" means:

6 (a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement,  
7 early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a  
8 defined benefit plan, the term does not mean an annuity.

9 (b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

10 ~~(43)~~(44) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan  
11 under one of the public employee retirement systems enumerated in 19-2-302.

12 ~~(44)~~(45) "Retirement system" or "system" means one of the public employee retirement systems  
13 enumerated in 19-2-302.

14 ~~(45)~~(46) "Service" means employment of an employee in a position covered by a retirement system.

15 ~~(46)~~(47) "Service credit" means the periods of time for which the required contributions have been made  
16 to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined  
17 benefit retirement plan.

18 ~~(47)~~(48) "Service retirement benefit" means the retirement benefit that the member may receive at normal  
19 retirement age.

20 ~~(48)~~(49) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member  
21 of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are  
22 statutorily designated to receive benefits upon the death of the member.

23 ~~(49)~~(50) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement  
24 plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to  
25 the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or  
26 otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the  
27 unfunded actuarial liabilities of the retirement plan.

28 ~~(50)~~(51) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a  
29 deceased member who died while in service under a defined benefit retirement plan.

30 ~~(51)~~(52) "Termination of employment", "termination from employment", "terminated employment",

1 "terminated from employment", "terminate employment", or "terminates employment" means that:

2 (a) there has been a complete severance of a covered employment relationship by the positive act of  
3 either the employee, the employer, or both; and

4 (b) the member is no longer receiving compensation for covered employment, other than any outstanding  
5 lump-sum payment for compensatory leave, sick leave, or annual leave.

6 ~~(52)~~(53) "Termination of service", "termination from service", "terminated from service", "terminated  
7 service", "terminating service", or "terminates service" means that:

8 (a) there has been a complete severance of a covered employment relationship by the positive act of  
9 either the employee, the employer, or both for at least 30 days;

10 (b) no written or verbal agreement exists between employee and employer that the employee will return  
11 to covered employment in the future;

12 (c) the member is no longer receiving compensation for covered employment; and

13 (d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to  
14 which the member was entitled. For the purposes of this subsection ~~(52)~~ (53), compensation does not mean  
15 compensation as a result of a legal action, court order, or settlement to which the board was not a party.

16 ~~(53)~~(54) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit  
17 retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that  
18 same date.

19 ~~(54)~~(55) "Vested account" means an individual account within a defined contribution plan that is for the  
20 exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the  
21 income on all contributions in each of the following accounts:

22 (a) the member's contribution account;

23 (b) the vested portion of the employer's contribution account; and

24 (c) the member's account for other contributions.

25 ~~(55)~~(56) "Vested member" or "vested" means:

26 (a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years  
27 of membership service; or

28 (b) with respect to the defined contribution plan, a member or the status of a member who meets the  
29 minimum membership service requirement of 19-3-2116.

30 ~~(56)~~(57) "Written application" or "written election" means a written instrument, prescribed by the board

1 or required by law, properly signed and filed with the board, that contains all required information, including  
 2 documentation that the board considers necessary.

3 ~~(57)(58)~~ "Written instrument" includes an electronic record containing an electronic signature, as defined  
 4 in 30-18-102."

5

6 **Section 2.** Section 19-2-1005, MCA, is amended to read:

7 **"19-2-1005. Compensation limit.** (1) A retirement system or plan subject to this chapter may not take  
 8 into account compensation of a member in excess of the amount permitted in section 401(a)(17) of the Internal  
 9 Revenue Code, 26 U.S.C. 401(a)(17), as adjusted for cost-of-living increases in accordance with section  
 10 401(a)(17)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(17)(B).

11 (2) (a) Except as provided in subsection (2)(b), for a member hired on or after July 1, 2013, a retirement  
 12 system or plan subject to this chapter may not include the following amounts of excess earnings in the calculation  
 13 of a member's highest average compensation or final average compensation:

14 (i) for the first year included in the calculation, any compensation that is greater than ~~445%~~ 110% of the  
 15 compensation paid to the member in the previous year; and

16 (ii) for each subsequent year included in the calculation, any compensation that is greater than ~~445%~~  
 17 110% of the compensation included in the calculation for the previous year.

18 (b) In determining a member's retirement benefit, total excess earnings, if any, must be divided by the  
 19 member's total months of service credit and added to each month's compensation included in the member's  
 20 highest average compensation or final average compensation as limited under subsection (2)(a)."

21

22 **Section 3.** Section 19-3-108, MCA, is amended to read:

23 **"19-3-108. Definitions.** Unless the context requires otherwise, as used in this chapter, the following  
 24 definitions apply:

25 (1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for  
 26 the member's services or for time during which the member is excused from work because of a holiday or  
 27 because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave  
 28 of absence before any pretax deductions allowed by state or federal law are made.

29 (b) Compensation does not include:

30 (i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;



- 1 (ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;
- 2 (iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related
- 3 services;
- 4 (iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; ~~and~~
- 5 (v) lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid
- 6 without termination of employment;
- 7 (VI) FOR EMPLOYEES WHO BECAME MEMBERS ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT], ELECTIVE
- 8 CONTRIBUTIONS UNDER A CAFETERIA PLAN PROVIDED FOR IN 26 U.S.C. 125; OR
- 9 (VII) BONUSES PROVIDED AFTER JULY 1, 2013, THAT ARE ONE-TIME, TEMPORARY PAYMENTS IN ADDITION TO AND
- 10 NOT CONSIDERED PART OF BASE PAY.
- 11 (2) "Contracting employer" means any political subdivision or governmental entity that has contracted
- 12 to come into the system under this chapter.
- 13 (3) "Defined benefit plan" means the plan within the public employees' retirement system established
- 14 in 19-3-103 that is not the defined contribution plan.
- 15 (4) "Employer" means the state of Montana, its university system or any of the colleges, schools,
- 16 components, or units of the university system for the purposes of this chapter, or any contracting employer.
- 17 (5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from
- 18 appropriations of the state of Montana and from contracting employers.
- 19 (6) (a) "Highest average compensation" means:
- 20 (i) for a member hired prior to July 1, 2011, the highest average monthly compensation during any 36
- 21 consecutive months of membership service;
- 22 (ii) for a member hired on or after July 1, 2011, the highest average monthly compensation during any
- 23 60 consecutive months of membership service; or
- 24 (iii) in the event a member has not served the minimum specified period of service, the total
- 25 compensation earned divided by the months of membership service.
- 26 (b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave,
- 27 banked holiday time, and annual leave, paid to the member upon termination of employment may be used in the
- 28 calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis,
- 29 the regular compensation for a month or months included in the calculation of the highest average compensation.
- 30 A lump-sum payment may not be added to a single month's compensation.

1           (c) Excess earnings limits must be applied to the calculation of the highest average compensation  
2 pursuant to 19-2-1005(2).

3           (7) "System" or "retirement system" means the public employees' retirement system established in  
4 19-3-103."

5  
6           **Section 4.** Section 19-5-101, MCA, is amended to read:

7           **"19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following  
8 definitions apply in this chapter:

9           (1) (A) "Compensation" means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, paid to a  
10 member.

11           (B) FOR EMPLOYEES WHO BECAME MEMBERS ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT], COMPENSATION  
12 DOES NOT INCLUDE ELECTIVE CONTRIBUTIONS UNDER A CAFETERIA PLAN PROVIDED FOR IN 26 U.S.C. 125.

13           (C) COMPENSATION DOES NOT INCLUDE BONUSES PROVIDED AFTER JULY 1, 2013, THAT ARE ONE-TIME,  
14 TEMPORARY PAYMENTS IN ADDITION TO AND NOT CONSIDERED PART OF BASE PAY.

15           (2) "Current salary" means the current compensation for the office retired from.

16           (3) (a) "Highest average compensation" means a member's highest average monthly compensation  
17 during any 36 consecutive months of membership service.

18           (b) Excess earnings limits must be applied to the calculation of the highest average compensation  
19 pursuant to 19-2-1005(2).

20           (4) "Involuntary retirement" means a retirement not for cause and before retirement age.

21           (5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."  
22

23           **Section 5.** Section 19-6-101, MCA, is amended to read:

24           **"19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this  
25 chapter:

26           (1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for  
27 the member's services or for time during which the member is excused from work because the member has taken  
28 compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by  
29 state or federal law are made.

30           (b) Compensation does not include:

- 1           (i) maintenance, allowances, and expenses;
- 2           (ii) FOR EMPLOYEES WHO BECAME MEMBERS ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT], ELECTIVE
- 3 CONTRIBUTIONS UNDER A CAFETERIA PLAN PROVIDED FOR IN 26 U.S.C. 125; OR
- 4           (iii) BONUSES PROVIDED AFTER JULY 1, 2013, THAT ARE ONE-TIME, TEMPORARY PAYMENTS IN ADDITION TO AND
- 5 NOT CONSIDERED PART OF BASE PAY.

6           (2) "Dependent child" means an unmarried child of a deceased retired member, who is:

7           (a) under 18 years of age; or

8           (b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time

9 student in anticipation of receiving a certificate or degree.

10           (3) (a) "Highest average compensation" means a member's highest average monthly compensation

11 during any 36 consecutive months of membership service or, in the event a member has not served at least 36

12 months, the total compensation earned divided by the number of months of service.

13           (b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and

14 annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement

15 benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation

16 for a month or months included in the calculation of the highest average compensation. A lump-sum payment may

17 not be added to a single month's compensation.

18           (c) Excess earnings limits must be applied to the calculation of the highest average compensation

19 pursuant to 19-2-1005(2).

20           (4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's

21 death.

22           (5) "Survivor" means a surviving spouse or dependent child of a member."

23

24           **Section 6.** Section 19-7-101, MCA, is amended to read:

25           **"19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this

26 chapter:

27           (1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's

28 services or for time during which the member is excused from work because the member has taken

29 compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by

30 state or federal law are made.

1 (b) Compensation does not include:  
2 (i) maintenance, allowances, and expenses;  
3 (ii) FOR EMPLOYEES WHO BECAME MEMBERS ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT], ELECTIVE  
4 CONTRIBUTIONS UNDER A CAFETERIA PLAN PROVIDED FOR IN 26 U.S.C. 125; OR  
5 (iii) BONUSES PROVIDED AFTER JULY 1, 2013, THAT ARE ONE-TIME, TEMPORARY PAYMENTS IN ADDITION TO AND  
6 NOT CONSIDERED PART OF BASE PAY.

7 (2) "Detention officer" means any detention officer who is hired by a sheriff, employed in a detention  
8 center, and acting as a detention officer for the sheriff and who has received or is expected to receive training  
9 to meet the employment standards set for detention officers by the Montana public safety officer standards and  
10 training council established in 2-15-2029.

11 (3) (a) "Highest average compensation" means:  
12 (i) for members hired prior to July 1, 2011, the member's highest average monthly compensation during  
13 any 36 consecutive months of membership service;  
14 (ii) for members hired on or after July 1, 2011, the highest average compensation during any 60  
15 consecutive months of membership service; or  
16 (iii) if a member has not served the minimum specified period of membership service as applicable in  
17 subsection (3)(a)(i) or (3)(a)(ii), the total compensation earned divided by the number of months of service.

18 (b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and  
19 annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement  
20 benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation  
21 for a month or months included in the calculation of the highest average compensation. A lump-sum payment may  
22 not be added to a single month's compensation.

23 (c) Excess earnings limits must be applied to the calculation of the highest average compensation  
24 pursuant to 19-2-1005(2).

25 (4) "Investigator" means a person who is employed by the department of justice as a criminal investigator  
26 or as a gambling investigator.

27 (5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully  
28 trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and  
29 licensing."  
30

1           **Section 7.** Section 19-8-101, MCA, is amended to read:

2           **"19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this  
3 chapter:

4           (1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for  
5 the member's services or for time during which the member is excused from work because the member has taken  
6 compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax  
7 deductions allowed by state or federal law are made.

8           (b) Compensation does not include:

9           (i) maintenance, allowances, and expenses;

10           (ii) FOR EMPLOYEES WHO BECAME MEMBERS ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT], ELECTIVE  
11 CONTRIBUTIONS UNDER A CAFETERIA PLAN PROVIDED FOR IN 26 U.S.C. 125; OR

12           (iii) BONUSES PROVIDED AFTER JULY 1, 2013, THAT ARE ONE-TIME, TEMPORARY PAYMENTS IN ADDITION TO AND  
13 NOT CONSIDERED PART OF BASE PAY.

14           (2) (a) "Highest average compensation" means:

15           (i) for members hired prior to July 1, 2011, the highest average monthly compensation during any 36  
16 consecutive months of membership service;

17           (ii) for members hired on or after July 1, 2011, the highest average monthly compensation during any 60  
18 consecutive months of membership service; or

19           (iii) in the event a member has not served the minimum specified period of membership service, the total  
20 compensation earned divided by the number of months of service.

21           (b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave,  
22 annual leave, and banked holiday time, paid to the member upon termination of employment may be used in the  
23 calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis,  
24 the normal compensation for a month or months included in the calculation of the highest average compensation.  
25 A lump-sum payment may not be added to a single month's compensation.

26           (c) Excess earnings limits must be applied to the calculation of the highest average compensation  
27 pursuant to 19-2-1005(2).

28           (3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and  
29 parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the  
30 department of fish, wildlife, and parks money.

1 (4) "Motor carrier officer" means an employee of the department of transportation designated or  
2 appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

3 (5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment  
4 with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within  
5 the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of  
6 the state."

7

8 **Section 8.** Section 19-9-104, MCA, is amended to read:

9 **"19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this  
10 chapter:

11 (1) (a) "Compensation" means the remuneration paid from funds controlled by an employer in payment  
12 for the member's services before any pretax deductions allowed by state or federal law are made.

13 (b) Compensation does not include:

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

16 (ii) maintenance, allowances, and expenses;

17 (iii) FOR EMPLOYEES WHO BECAME MEMBERS ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT], ELECTIVE  
18 CONTRIBUTIONS UNDER A CAFETERIA PLAN PROVIDED FOR IN 26 U.S.C. 125; OR

19 (iv) BONUSES PROVIDED AFTER JULY 1, 2013, THAT ARE ONE-TIME, TEMPORARY PAYMENTS IN ADDITION TO AND  
20 NOT CONSIDERED PART OF BASE PAY.

21 (2) "Dependent child" means a child of a deceased member:

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

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

25 (3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system  
26 under 19-9-207.

27 (4) (a) "Final average compensation" means the monthly compensation of a member averaged over the  
28 last 36 months of the member's service or, in the event a member has not served at least 36 months, the total  
29 compensation earned divided by the number of months of service.

30 (b) Excess earnings limits must be applied to the calculation of the final average compensation pursuant

1 to 19-2-1005(2).

2 (5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the  
3 date on which a member both becomes age 50 and completes 5 years of membership service.

4 (6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective  
5 date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban  
6 law enforcement services, or the entire county included in the county-municipal consolidation.

7 (7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting  
8 officer with the requisite professional certification and licensing.

9 (8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the  
10 retirement system under 19-9-207.

11 (9) "Retirement date" means the date on which the first payment of the retirement, disability, or  
12 survivorship benefits of a member or a survivor is payable.

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

14 (11) "Survivor" means a surviving spouse or dependent child of the member."  
15

16 **Section 9.** Section 19-13-104, MCA, is amended to read:

17 **"19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this  
18 chapter:

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

22 (2) "Compensation" means:

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

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

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

29 (ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding  
30 overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of

1 sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the  
2 second class.

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

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

6 (ii) maintenance, allowances, and expenses;

7 (iii) FOR EMPLOYEES WHO BECAME MEMBERS ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT], ELECTIVE  
8 CONTRIBUTIONS UNDER A CAFETERIA PLAN PROVIDED FOR IN 26 U.S.C. 125; OR

9 (iv) BONUSES PROVIDED AFTER JULY 1, 2013, THAT ARE ONE-TIME, TEMPORARY PAYMENTS IN ADDITION TO AND  
10 NOT CONSIDERED PART OF BASE PAY.

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

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

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

15 (4) "Employer" means:

16 (a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211;

17 (b) a city or a rural fire district referred to in 19-13-210(3);

18 (c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department  
19 of military affairs established in 2-15-1201; and

20 (d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.

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

22 (6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards  
23 provided in 7-33-4106 and 7-33-4107.

24 (7) (a) "Highest average compensation" means the monthly compensation of a member averaged over  
25 the highest consecutive 36 months of the member's active service or, in the event a member has not served at  
26 least 36 consecutive months, the total compensation earned divided by the number of months of service.

27 (b) Lump-sum payments for annual leave paid to the member upon termination of employment may be  
28 used to replace, on a month-for-month basis, the regular compensation for a month or months included in the  
29 calculation of highest average compensation.

30 (c) Excess earnings limits must be applied to the calculation of the highest average compensation



1 pursuant to 19-2-1005(2).

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

5 (9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in  
6 excess of \$300 a year for service as a firefighter and who is appointed by an employer as a firefighter under the  
7 standards provided in 7-33-4106 and 7-33-4107.

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

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

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

13 (13) "Surviving spouse" means the spouse married to a member at the time of the member's death."  
14

15 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2013.

16 - END -