

1 HOUSE BILL NO. 112

2 INTRODUCED BY J. PRICE

3 BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROVISIONS OF THE TEACHERS' RETIREMENT
6 SYSTEM TO IMPROVE THE SYSTEM'S ACTUARIAL FUNDING; CREATING TWO MEMBERSHIP TIERS;
7 INCREASING EMPLOYEE AND EMPLOYER CONTRIBUTIONS; AUTHORIZING THE TEACHERS'
8 RETIREMENT BOARD TO ADJUST CERTAIN CONTRIBUTIONS UNDER CERTAIN CONDITIONS; REVISING
9 HOW AVERAGE FINAL COMPENSATION IS CALCULATED FOR NEW MEMBERS; REVISING SERVICE
10 RETIREMENT AND EARLY RETIREMENT ELIGIBILITY FOR NEW MEMBERS; REVISING DEATH AND
11 DISABILITY BENEFIT PROVISIONS FOR NEW MEMBERS; REVISING THE BENEFIT MULTIPLIER FOR NEW
12 MEMBERS; STATUTORILY APPROPRIATING MONEY FROM THE PUBLIC SCHOOL FUND GUARANTEE
13 ACCOUNT TO THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-20-101, 19-20-208,
14 19-20-409, 19-20-427, 19-20-602, 19-20-605, 19-20-716, 19-20-732, 19-20-801, 19-20-802, 19-20-804,
15 19-20-805, 19-20-901, 19-20-1001, 20-9-501, AND 20-9-622, MCA; AND PROVIDING AN EFFECTIVE DATE."
16

17 WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems
18 shall be funded on an actuarially sound basis"; and

19 WHEREAS, Article VIII, section 15, of the Constitution of the State of Montana also requires that "Public
20 retirement system assets, including income and actuarially required contributions, shall not be encumbered,
21 diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries
22 and to defray administrative expenses"; and

23 WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent
24 slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates
25 together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially
26 sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement
27 benefits for members currently in the system; and

28 WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to
29 be paid to current system participants in jeopardy and results in collection of employee contributions for which
30 future benefits may not be guaranteed; and

1 WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the
2 credit ratings of the State of Montana and of local government entities, including public school districts; and

3 WHEREAS, because reasonable increases in employer contributions and reasonable reductions in
4 benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound
5 funding, increased contributions for current and future participants and reduced benefits for future participants
6 are also necessary to return the system to a position of actuarially sound funding; and

7 WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable
8 pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future
9 pension benefits promised to current system participants; and

10 WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees,
11 the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for
12 returning the system to a position of actuarially sound funding without raising contract impairment issues for
13 current members, but recent actuarial analysis continues to show that the system remains actuarially unsound;
14 and

15 WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and
16 taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system
17 members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system
18 funding improves, in conjunction with additional employer and state contributions, is reasonable and necessary
19 pursuant to the language of *U.S. Trust Company of New York v. New Jersey*, 431 U.S. 1 (1977), concerning
20 contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its
21 constitutional obligation to ensure the retirement system is funded in an actuarially sound manner.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24
25 **Section 1.** Section 19-20-101, MCA, is amended to read:

26 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the
27 following definitions apply:

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

1 retirement.

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

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

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

8 (5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a
9 retirement allowance.

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

11 (7) (a) "Earned compensation" means, except as limited by subsections (7)(b) and (7)(c) or by
12 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any
13 pretax deductions allowed under the Internal Revenue Code are deducted.

14 (b) Earned compensation does not include:

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

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

18 (A) professional membership dues;

19 (B) maintenance;

20 (C) housing;

21 (D) day care;

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

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

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

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

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

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

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

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

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

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

5 (8) "Employer" means:

6 (a) the state of Montana;

7 (b) a public school district, as provided in 20-6-101 and 20-6-701;

8 (c) the office of public instruction;

9 (d) the board of public education;

10 (e) an education cooperative;

11 (f) the Montana school for the deaf and blind, as described in 20-8-101;

12 (g) the Montana youth challenge program, as defined in 10-1-101;

13 (h) a state youth correctional facility, as defined in 41-5-103;

14 (i) the Montana university system;

15 (j) a community college; or

16 (k) any other agency or subdivision of the state that employs a person who is designated a member of
17 the retirement system pursuant to 19-20-302.

18 (9) "Full-time service" means service that is:

19 (a) at least 180 days in a fiscal year;

20 (b) at least 140 hours a month during at least 9 months in a fiscal year; or

21 (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board
22 and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a
23 school district operating under an alternative school calendar must be applied uniformly to all employees of the
24 school district required to be reported to the retirement system.

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

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

28 (12) "Member" means a person who has an individual account in the annuity savings account. Unless
29 otherwise specified, the term refers to both a tier one member and a tier two member. An active member is a
30 person included under the provisions of 19-20-302. An inactive member is a person included under the provisions

1 of 19-20-303.

2 (13) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the
3 lifetime of the retired member.

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

6 (15) "Part-time service" means service that is not full-time service. Part-time service must be credited in
7 the proportion that the actual time worked compares to full-time service.

8 (16) "Regular interest" means interest at a rate set by the retirement board in accordance with
9 19-20-501(2).

10 (17) "Retired", "retired member", or "retiree" means a person who has terminated employment that
11 qualifies the person for membership and who has received at least one monthly retirement benefit paid pursuant
12 to this chapter.

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

15 (19) "Retirement board" or "board" means the retirement system's governing board provided for in
16 2-15-1010.

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

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

21 (22) "Termination" or "terminate" means that the member has severed the employment relationship with
22 the member's employer and that all, if any, payments due upon termination of employment, including but not
23 limited to accrued sick and annual leave balances, have been paid to the member.

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

27 (b) Termination pay does not include:

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

30 (ii) amounts that are payable to a member from a plan for the deferral of compensation under section

457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(24) "Tier one member" means a person who became a member before July 1, 2013, and has not withdrawn the member's account balance.

(25) "Tier two member" means a person who became a member on or after July 1, 2013, or who, after withdrawing the member's account balance, became a member again after July 1, 2013.

~~(24)~~(26) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

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

Section 2. Section 19-20-208, MCA, is amended to read:

"19-20-208. Duties and liability of employer. (1) Each employer shall:

(a) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and [section 6] and transmit the contribution each month to the executive director of the retirement board;

(b) transmit to the executive director of the retirement board the employer's ~~contribution~~ contributions prescribed by 19-20-605 and [section 8], at the time that the employee contributions are transmitted;

(c) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(d) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(e) each month, report the name, social security number, time worked, and gross earnings of each retired member of the system who has been employed in a position that is reportable to the retirement system pursuant to 19-20-731;

(f) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(g) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(h) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board; and

(i) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.

(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest."

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

"19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

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

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

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

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

(6) If an active member who also has creditable service in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system.

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

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

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

(c) Any employee and employer contributions due as calculated in 19-20-602, [section 6], and 19-20-605, and [section 8], plus interest, are the liability of the employee and the employing entity where the error occurred.

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

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

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

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

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

Section 4. Section 19-20-427, MCA, is amended to read:

"19-20-427. Redeposit of contributions previously withdrawn. (1) In addition to the ~~normal~~ contributions required under 19-20-602 and [section 6], subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity

savings account, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest paid as follows:

(a) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions would have earned had the contributions not been withdrawn; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The redeposit must be made in accordance with 19-20-415."

Section 5. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings account -- member's contribution. (1) The annuity savings account is an account in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member.

(2) (a) The normal contribution rate of each tier one member is 7.15% of the member's earned compensation.

(b) The normal contribution rate of each tier two member is 8.15% of the member's earned compensation.

~~(2)(3)~~ Contributions under [section 6] and this section to and payments from the annuity savings account must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection ~~(2) (3)~~ for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the

1 amount of the member's contributions picked up by the employer and remit the total of the contributions to the
2 retirement board.

3 (d) The deductions must be made notwithstanding that the minimum compensation provided by law for
4 a member may be reduced by the deductions. Each member is considered to consent to the deductions
5 prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge
6 of all claims for the services rendered by the member during the period covered by the payment, except as to the
7 benefits provided by the retirement system.

8 ~~(3)~~(4) The accumulated contributions of a member withdrawn by the member or paid to the member's
9 estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity
10 savings account. Upon the retirement of a member, the member's accumulated contributions must be transferred
11 from the annuity savings account to the pension accumulation account."
12

13 **NEW SECTION. Section 6. Member supplemental contribution -- actuarially determined**
14 **adjustments -- effective dates.** (1) (a) Subject to subsections (1)(b) and (1)(c), a tier one member shall
15 contribute to the retirement system a supplemental amount equal to 1% of the member's earned compensation.

16 (b) The board may decrease the tier one member supplemental contribution if:

17 (i) the average funded ratio of the system based on the last three actuarial valuations is equal to or
18 greater than 90%; and

19 (ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial
20 valuation is less than 15 years.

21 (c) Following one or more decreases in the supplemental contribution rate pursuant to subsection (1)(b),
22 the board may increase the supplemental contribution to a rate not to exceed 1% if:

23 (i) the average funded ratio of the system based on the last three annual actuarial valuations is equal
24 to or less than 80%; and

25 (ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial
26 valuation is greater than 20 years.

27 (3) (a) Subject to subsection (3)(b), on or after January 1, 2023, the board may require a tier two member
28 to contribute to the retirement system a supplemental amount if:

29 (i) the average funded ratio of the system based on the last three annual actuarial valuations is equal
30 to or less than 80%;

(ii) the period necessary to amortize all liabilities of the system based on the latest annual actuarial valuation is greater than 20 years; and

(iii) a state or employer contribution rate increase or a flat dollar contribution to the retirement system trust fund has been enacted that is equivalent to or greater than the supplemental contribution rate imposed by the board pursuant to this subsection (3)(a).

(b) A tier two member supplemental contribution increase under this subsection (3) may not:

(i) exceed 0.5% of earned compensation; and

(ii) result in an aggregate tier two member contribution rate of more than 9.15% when added to the normal contribution rate required under 19-20-602.

(c) Following imposition of a supplemental contribution rate increase under this subsection (3), the board may decrease the supplemental contribution rate if:

(i) the average funded ratio of the system based on the previous three annual actuarial valuations is equal to or greater than 90%; and

(ii) the period necessary to amortize all liabilities of the system based on the latest annual actuarial valuation is less than 15 years.

(4) After the board has actuarially determined the need to impose, increase, or decrease a supplemental contribution rate under this section, the imposition, increase, or decrease is effective on the first day of July following the board's determination.

Section 7. Section 19-20-605, MCA, is amended to read:

"19-20-605. Pension accumulation account -- employer's contribution. (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. ~~Contributions to and payments from~~ Employer contributions to the pension accumulation account must be made as provided in [section 8] and this section.

(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of total earned compensation, plus the supplemental contribution required under [section 8].

(3) For each member employed by a school district, an education cooperative, a county, or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension

1 accumulation account an amount equal to 7.47% of total earned compensation, plus the supplemental
2 contribution required under [section 8].

3 (4) Beginning July 1, 2013, for each retired member who returns to covered employment under the
4 provisions of 19-20-731 during all or part of the preceding payroll period, the employer shall pay into the pension
5 accumulation account an amount equal to 9.85% of the total earned compensation paid to the retired member,
6 plus the supplemental contribution required under [section 8].

7 (5) If the employer is a district or community college district, the trustees shall budget and pay for the
8 employer's contribution under the provisions of 20-9-501.

9 (6) If the employer is the superintendent of public instruction, a public institution of the state of Montana,
10 a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall
11 appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

12 (7) If the employer is a county, the county commissioners shall budget and pay for the employer's
13 contribution in the manner provided by law for the adoption of a county budget and for payments under the
14 budget.

15 (8) All interest and other earnings realized on the money of the retirement system must be credited to
16 the pension accumulation account, and the amount required to allow regular interest on the annuity savings
17 account must be transferred to that account from the pension accumulation account.

18 (9) The board may transfer from the pension accumulation account to the expense account an amount
19 necessary to cover expenses of administration."
20

21 **NEW SECTION. Section 8. Employer's supplemental contribution -- actuarially determined**
22 **adjustments.** (1) (a) Subject to subsections (1)(b) and (1)(c), each employer shall contribute to the retirement
23 system a supplemental amount equal to 1% of total earned compensation of each member employed during the
24 whole or part of the preceding payroll period.

25 (b) The board may decrease the employer's supplemental contribution if:

26 (i) the average funded ratio of the system based on the last three actuarial valuations is equal to or
27 greater than 90%; and

28 (ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial
29 valuation is less than 15 years.

30 (c) Following one or more decreases in the supplemental contribution rate pursuant to subsection (1)(b),

1 the board may increase the supplemental contribution to a rate not to exceed 1% if:

2 (i) the average funded ratio of the system based on the last three annual actuarial valuations is equal
3 to or less than 80%; and

4 (ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial
5 valuation is greater than 20 years.

6 (2) After the board has actuarially determined the need to impose, increase, or decrease a supplemental
7 contribution rate under this section, the imposition, increase, or decrease is effective on the first day of July
8 following the board's determination.

9
10 **Section 9.** Section 19-20-716, MCA, is amended to read:

11 **"19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of
12 retirement, the member shall select, subject to subsections (5) and (6), by signing a binding, irrevocable written
13 election at least 90 days before the member's termination date, one of the following options:

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

18 (b) Option 2--The member may use a yearly amount of the total termination pay added to each of the
19 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine
20 the amount of termination pay used in the calculation of average final compensation, termination pay must be
21 divided by the total number of years of creditable service to determine a yearly amount. The member and the
22 employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602, ~~and~~
23 19-20-605(1), [section 6], and [section 8]. For the purposes of this subsection (1)(b), the employer shall also pay
24 as a contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that
25 would have been payable by the state as a supplemental contribution. The contributions must be made at the
26 time of termination.

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

29 (2) A binding, irrevocable written election required by this section must be signed by both the member
30 and the employer at least 90 days prior to the member's termination date and must contain statements with

1 regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

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

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

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

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

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

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

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

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

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

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

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

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

25
26 **Section 10.** Section 19-20-732, MCA, is amended to read:

27 **"19-20-732. (Temporary) Reemployment of certain retired teachers, specialists and administrators**
28 **-- procedure -- definitions.** (1) Subject to the provisions of this section:

29 (a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than
30 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a

1 full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss
2 or interruption of any payments or retirement benefits if:

3 (i) the retired member completed 30 or more years of creditable service prior to retirement;

4 (ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

5 (iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction
6 and to the retirement board that after having advertised the position for that year the employer has been unable
7 to fill the position because the employer either has received no qualified applications or has not received an
8 acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator;

9 (b) the employer certification required by this section must include the retired member's name and social
10 security number and a copy of the proposed contract of employment for the retired member;

11 (c) upon receipt of the employer's certification and of the proposed contract of employment, the
12 retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall
13 notify the employer and the retired member of its findings;

14 (d) a retired member reemployed under this section is ineligible for active membership under 19-20-302
15 and is ineligible to receive service credit under any retirement system identified in Title 19; and

16 (e) the retirement board shall report to the appropriate committee each legislative session regarding the
17 implementation of and results arising from this section.

18 (2) An employer employing a retired member pursuant to this section shall contribute monthly to the
19 retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604,
20 19-20-605, ~~and 19-20-607~~, [section 6], and [section 8].

21 (3) A retired member reemployed pursuant to this section is exempt from the earnings and employment
22 limits provided in 19-20-731.

23 (4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter
24 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits
25 and protections of the agreement.

26 (5) The board may adopt rules to implement this section.

27 (6) As used in this section, the following definitions apply:

28 (a) "Employer" means a school district as defined in 20-6-101 and 20-6-701.

29 (b) "Year" means all or any part of a school year. (Terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"

30

1 **Section 11.** Section 19-20-801, MCA, is amended to read:

2 **"19-20-801. Eligibility for service retirement.** (1) A tier one member who is eligible to receive a service
3 retirement allowance calculated under 19-20-804(1) if the member:

4 (a) has been credited with at least 5 full years of creditable service and who has attained the age of 60;
5 or

6 (b) has been credited with full-time or part-time creditable service in 25 or more years may retire from
7 service if the member has.

8 (2) Except as provided in subsection (3), a tier two member is eligible to receive a service retirement
9 allowance calculated under 19-20-804(1) if the member:

10 (a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or

11 (b) has been credited with full-time or part-time creditable service in 30 or more years and has attained
12 the age of 55.

13 (3) A tier two member who has been credited with 30 or more years of creditable service and has
14 attained the age of 60 is eligible for a professional retirement option allowance calculated under 19-20-804(2).

15 (4) To receive a retirement allowance under 19-20-804, the member must have terminated employment
16 in all positions from which the member is eligible to retire and files must file a written application with the
17 retirement board a written application."

19 **Section 12.** Section 19-20-802, MCA, is amended to read:

20 **"19-20-802. Early retirement.** (1) (a) A tier one member who is not eligible for service retirement but
21 who has been credited with at least 5 years of creditable service and who has attained the age of 50 may retire
22 from service and be is eligible for an early retirement allowance if the member files with the retirement board the
23 member's written application.

24 (b) A tier two member who is not eligible for service retirement but who has at least 5 years of creditable
25 service and has attained the age of 55 is eligible for an early retirement allowance.

26 (2) A member retiring early under subsection (1) must have terminated employment in all positions
27 reportable to the retirement system and must file a written application with the retirement board.

28 (2)(3) The early retirement allowance must be determined as prescribed in 19-20-804, with the exception
29 that the allowance will be reduced using actuarially equivalent factors based on the most recent actuarial
30 valuation of the system."

1
2 **Section 13.** Section 19-20-804, MCA, is amended to read:

3 **"19-20-804. Allowance for service retirement -- professional retirement option allowance --**
4 **creditable service limitation.** (1) Upon termination, a tier one or tier two member who qualifies for benefits
5 pursuant to 19-20-801(1) or (2) must receive a retirement allowance equal to one-sixtieth of the member's
6 average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable
7 service ~~and service transferred under 19-20-409.~~

8 (2) (a) Upon termination, a tier two member who qualifies for benefits pursuant to 19-20-801(3) must
9 receive a professional retirement option allowance equal to 2% of the member's final average compensation, as
10 limited by 19-20-715, multiplied by the sum of the member's years of creditable service.

11 (b) For the purpose of calculating the professional retirement option, creditable service does not include
12 service credited before the member became a tier two member even if the member redeposits the member's
13 withdrawn contributions pursuant to 19-20-427 or service credit transferred under 19-20-409."

14
15 **Section 14.** Section 19-20-805, MCA, is amended to read:

16 **"19-20-805. Calculation of average final compensation.** (1) Except as limited by this section, average
17 final compensation is calculated by averaging the earned compensation paid to:

18 (a) a tier one member in 3 consecutive fiscal years of full-time service that yields the highest average;
19 or

20 (b) a tier two member in 5 consecutive fiscal years of full-time service that yields the highest average.

21 (2) (a) The earned compensation of a tier one member who retires under 19-20-802, 19-20-804, or
22 19-20-902 and has less than 3 consecutive years of full-time service during the 5 years immediately preceding
23 the member's termination is the compensation that the member would have earned in the 3 years used to
24 calculate average final compensation had the member's part-time service during the 5 years preceding
25 termination been full-time service.

26 (b) The earned compensation of a tier two member who retires under 19-20-802, 19-20-804, or
27 19-20-902 and has less than 5 consecutive years of full-time service during the 7 years immediately preceding
28 the member's termination is the compensation that the member would have earned in the 5 years used to
29 calculate average final compensation had the member's part-time service during the 7 years preceding
30 termination been full-time service.

(3) To determine the compensation that the member would have earned under subsection (2), the compensation reported must be divided by the part-time service credited to the member's account.

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

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

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

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

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

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

1

2 **Section 15.** Section 19-20-901, MCA, is amended to read:

3 **"19-20-901. Eligibility for disability retirement -- determination by board.** (1) ~~Upon~~ Except as
4 provided in subsection (5), upon the application of a member or of the member's employer for a disability
5 retirement allowance, any member who has 5 or more years of creditable service and who has become disabled
6 while being an active member may be retired by the retirement board the month immediately following the month
7 in which employment is terminated.

8 (2) In order for a member to be eligible for disability retirement, the retirement board or its representative
9 shall certify that the member is mentally or physically incapacitated for the further performance of the member's
10 duties, that the incapacity is likely to be permanent, and that the member should be retired. The board's
11 representative shall report to the board the representative's findings and any action taken by the representative,
12 and the action must be presented to the board for approval by the board.

13 ~~(2)(3)~~ In making a determination under subsection ~~(1)~~ (2), the retirement board or its representative may:
14 (a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;
15 (b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and
16 (c) issue subpoenas to compel the attendance of witnesses and the production of books, papers,
17 correspondence, memorandums, and other records considered necessary as evidence in connection with a claim
18 for disability retirement. The subpoenas issued under this subsection ~~(2)(e)~~ (3)(c) are enforceable as provided
19 in 2-4-104.

20 ~~(3)(4)~~ The retirement board may secure and pay reasonable compensation for professional services and
21 advice that the board determines necessary to carry out the purposes of this part.

22 (5) (a) A tier two member is not eligible for disability retirement if the member is or will be eligible for
23 service retirement on or before the member's date of termination.

24 (b) A disability retirement application filed by a member who is ineligible for disability retirement under
25 subsection (5)(a) must be processed as an application for a service retirement allowance."

26

27 **Section 16.** Section 19-20-1001, MCA, is amended to read:

28 **"19-20-1001. Allowances for death of member prior to retirement.** (1) If a member dies before
29 retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary
30 that the member nominated by a written application in a manner prescribed by the board and filed with the

1 retirement board prior to the member's death.

2 (2) (a) ~~in~~ Except as provided in subsection (2)(d), in lieu of benefits provided for in subsection (1), if the
3 deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect
4 to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804,
5 without reference to 19-20-715(2), in the same manner as if the member elected option A provided for in
6 19-20-702(2)(a).

7 (b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

8 (i) the first of the month following the date of death; or

9 (ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system
10 before the member's death.

11 (c) In the event that a beneficiary receiving payments under subsection (2)(a) dies and payments made
12 to the beneficiary do not equal the amount of the member's accumulated contributions at the time of the member's
13 death, the difference between the total retirement allowance payments made and the amount of the accumulated
14 contributions at the time of the member's death must be paid to the beneficiary's estate.

15 (d) The nominated beneficiary of a deceased tier two member may elect to receive a retirement
16 allowance as permitted under subsection (2)(a) only if the tier two member died within 1 year of the last day on
17 which the tier two member was employed in a position reportable to the retirement system. If the tier two member
18 was an inactive member for more than 1 year before the member's date of death, the tier two member's
19 accumulated contributions must be paid pursuant to subsection (1).

20 (3) If the deceased member had 5 or more years of creditable service and was an active member in the
21 state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the
22 member's designated beneficiary.

23 (4) If a deceased member had 5 or more years of creditable service and was an active member in the
24 state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor
25 child of the deceased member until the child reaches 18 years of age.

26 (5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this
27 section upon the member's death, then:

28 (a) each beneficiary is entitled to share in that benefit; and

29 (b) if a beneficiary predeceases the member, the benefit must be divided among the surviving
30 beneficiaries.

(6) If a family law order has been issued, an alternate payee's rights under the family law order must be given priority over the rights of a beneficiary."

Section 17. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; and

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative

1 shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance
2 systems from the funding source that pays the employee's salary.

3 (3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall
4 include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the
5 final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems
6 in accordance with the financial administration provisions of this title.

7 (4) When the final retirement fund budget has been adopted, the county superintendent shall establish
8 the levy requirement by:

9 (a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

10 (i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal
11 year;

12 (ii) oil and natural gas production taxes;

13 (iii) coal gross proceeds taxes under 15-23-703;

14 (iv) any fund balance available for reappropriation as determined by subtracting the amount of the
15 end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal
16 year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating
17 reserve may not be more than ~~35%~~ 20% of the final retirement fund budget for the ensuing school fiscal year and
18 must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement
19 fund budget.

20 (v) property tax reimbursements made pursuant to 15-1-123(6);

21 (vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school
22 fiscal year, excluding any guaranteed tax base aid;

23 (b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the
24 levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final
25 retirement fund budget.

26 (5) The county superintendent shall:

27 (a) total the net retirement fund levy requirements separately for all elementary school districts, all high
28 school districts, and all community college districts of the county, including any prorated joint district or special
29 education cooperative agreement levy requirements; and

30 (b) report each levy requirement to the county commissioners by the later of the first Tuesday in

September or within 30 calendar days after receiving certified taxable values as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction on or before September 15. The report must be completed on forms supplied by the superintendent of public instruction."

Section 18. Section 20-9-622, MCA, is amended to read:

"20-9-622. Guarantee account. (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to:

(a) stabilize the long-term growth of the permanent fund; and

(b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account.

(2) Except as provided in subsection (2) (3), the guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

~~(2)(3) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall monthly transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is currently outstanding. When the loan is fully paid, all mineral royalties deposited in the guarantee account must be transferred to the school facility and technology account pursuant to 17-6-340. The amount of \$25 million in each fiscal year is statutorily appropriated, as provided in 17-7-502, from the guarantee account to the teachers' retirement system established pursuant to 19-20-102. Amounts deposited to the guarantee account must be paid to the teachers' retirement system as soon as feasible after the deposits are made until the full \$25 million is paid and prior to any distribution to the school districts under subsection (2)."~~

NEW SECTION. Section 19. Codification instruction. [Sections 6 and 8] are intended to be codified as an integral part of Title 19, chapter 20, part 6, and the provisions of Title 19, chapter 20, part 6, apply to [sections 6 and 8].

NEW SECTION. Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 21. Effective date. [This act] is effective July 1, 2013.

- END -