

HOUSE BILL NO. 564

INTRODUCED BY A. PERSON

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE LAW RELATED TO THE SOCIAL SECURITY ACT; REVISING DEFINITIONS; UPDATING REFERENCES TO FEDERAL LAW; UPDATING LANGUAGE CONCERNING EXCLUSIONS, REFERENDUMS, RULEMAKING, AGREEMENTS, AND CONTRIBUTIONS; AND AMENDING SECTIONS 19-1-102, 19-1-103, 19-1-104, 19-1-201, 19-1-202, 19-1-302, 19-1-303, 19-1-304, 19-1-401, 19-1-402, 19-1-501, 19-1-502, 19-1-503, 19-1-702, 19-1-704, 19-1-811, 19-1-815, 19-1-822, 19-1-823, 19-1-824, AND 19-1-826, MCA."

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

Section 1. Section 19-1-102, MCA, is amended to read:

"19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Administrator" means the employee of the department who is designated as the state social security administrator and is delegated the authority to carry out the requirements of this chapter.

(2) "Department" means the department of administration provided for in 2-15-1001.

~~(+)(3)~~ "Employee" means an elective or appointive officer or employee of the state or a political subdivision of the state.

~~(2)(4)~~ "Employee tax" means the tax imposed by section 3101 of the Internal Revenue Code, 26 U.S.C. 3101, as amended.

~~(3)(5)~~ (a) "Employment" means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute employment as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term employment.

(c) Service that under the Social Security Act may be included in an agreement only upon certification

1 by the governor in accordance with section 218(d)(3) of that act is included in the term employment if and when
 2 the governor issues, with respect to the service, a certificate to the secretary of health and human services
 3 pursuant to 19-1-304.

4 ~~(4)~~(6) "Federal Insurance Contributions Act" means subchapters A and B of chapter 21 of the Internal
 5 Revenue Code.

6 ~~(5)~~(7) "Political subdivision" means an instrumentality of the state, of one or more of its political
 7 subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but
 8 only if the instrumentality is a legally constituted entity that is legally separate and distinct from the state or
 9 subdivision and only if its employees are not by virtue of their relation to the entity employees of the state or
 10 subdivision. The term includes special districts or authorities created by the legislature or local governments,
 11 including but not limited to school districts and housing authorities.

12 ~~(6)~~(8) "Secretary of health and human services" means the secretary of the United States department
 13 of health and human services. The term includes any individual to whom the secretary of health and human
 14 services has delegated any functions under the Social Security Act with respect to coverage under that act of
 15 employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953,
 16 includes the federal security administrator and any individual to whom the administrator had delegated any
 17 function.

18 ~~(7)~~(9) "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat.
 19 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the
 20 act, as the act has been and may be amended.

21 ~~(8)~~ "State agency" means the department of administration provided for in 2-15-1001.

22 ~~(9)~~(10) "Wages" means all remuneration for employment, including the cash value of all remuneration
 23 paid in any medium other than cash, except that the term does not include that part of remuneration that, even
 24 if it were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute
 25 wages within the meaning of that act."

26

27 **Section 2.** Section 19-1-103, MCA, is amended to read:

28 **"19-1-103. Exclusions.** This chapter ~~shall~~ does not apply to ~~and there shall be excluded from the~~
 29 ~~operation thereof all employees of the state and of the political subdivisions thereof operating under the provisions~~
 30 of any retirement plan for firefighters."

1

2 **Section 3.** Section 19-1-104, MCA, is amended to read:

3 **"19-1-104. Retirement systems to be considered separate.** (1) Pursuant to section 218(d)(6) of the
4 Social Security Act (42 U.S.C. 418(d)(6)), the public employees' retirement system of the state of Montana is, for
5 the purposes of this chapter, considered a separate retirement system with respect to the state and a separate
6 retirement system with respect to each political subdivision having positions covered by the system.

7 (2) Pursuant to section 218~~(f)(1)(c)~~(c) of the Social Security Act (42 U.S.C. 418~~(f)(1)(c)~~(c)), the Montana
8 judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' and peace officers'
9 retirement system, the highway patrol officers' retirement system of the state of Montana, the public employees'
10 retirement system of the state of Montana, and each municipal police retirement fund and each city participating
11 in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate
12 retirement systems with respect to the state and separate retirement systems with respect to each political
13 subdivision having positions covered by those systems."
14

14

15 **Section 4.** Section 19-1-201, MCA, is amended to read:

16 **"19-1-201. State agency to make Department may adopt rules.** ~~The state agency shall make and~~
17 ~~publish such~~ department may adopt rules, not inconsistent with the provisions of this chapter, as it finds
18 necessary ~~or appropriate to the efficient administration of the functions with which it is charged under to~~
19 implement the provisions of this chapter."
20

20

21 **Section 5.** Section 19-1-202, MCA, is amended to read:

22 **"19-1-202. Costs of administration.** All costs ~~allocable to~~ for the administration of this chapter must
23 be charged to the ~~state agency~~ department."
24

24

25 **Section 6.** Section 19-1-302, MCA, is amended to read:

26 **"19-1-302. Conduct of referendum.** ~~In either case, the~~ The governor shall designate the department
27 director, who shall direct the administrator to conduct and supervise a referendum. The referendum shall must
28 be conducted ~~and the governor shall designate an agency or individual to supervise its conduct,~~ in accordance
29 with the requirements of section 218(d)(3) of the Social Security Act (42 U.S.C. 418(d)(3)); on the question of
30 whether service in positions covered by a retirement system established by the state or by a political subdivision

1 thereof should be excluded from or included under this chapter."

2

3 **Section 7.** Section 19-1-303, MCA, is amended to read:

4 **"19-1-303. Notice of referendum.** The notice of referendum required by section 218(d)(3)(C) of the
5 Social Security Act (42 U.S.C. 418(d)(3)(C)) to be given to employees ~~shall~~ must contain or ~~shall~~ be accompanied
6 by a statement, in ~~such the~~ form and ~~such~~ detail as that the ~~agency or individual designated to supervise the~~
7 ~~referendum~~ department director, acting through the administrator, considers necessary and sufficient, informing
8 the employees of the rights ~~which that~~ will accrue to them and their dependents and survivors and the liabilities
9 to which they will be subject if their services are included under an agreement under this chapter."

10

11 **Section 8.** Section 19-1-304, MCA, is amended to read:

12 **"19-1-304. Certification of referendum by governor.** ~~Upon receiving~~ When the department receives
13 satisfactory evidence that ~~with respect to a referendum~~ the conditions specified in section 218(d)(3) of the Social
14 Security Act (42 U.S.C. 418(d)(3)) have been met, the governor shall certify the results of the referendum to the
15 secretary of health and human services."

16

17 **Section 9.** Section 19-1-401, MCA, is amended to read:

18 **"19-1-401. Authority for federal-state agreement.** The ~~state agency~~ department director, with the
19 approval of the governor, may enter, ~~on behalf of the state,~~ into an agreement on behalf of the state with the
20 secretary of health and human services, consistent with the terms and provisions of this chapter, for the purpose
21 of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any
22 political subdivision of the state with respect to services specified in the agreement that constitute "employment",
23 as defined in 19-1-102."

24

25 **Section 10.** Section 19-1-402, MCA, is amended to read:

26 **"19-1-402. Contents of federal-state agreement.** The agreement authorized by 19-1-401 may contain
27 provisions relating to coverage, benefits, effective date, and modification of the agreement, administration, and
28 other appropriate provisions as the ~~state agency~~ department director and secretary of health and human services
29 agree upon. Except as otherwise required or permitted by the Social Security Act regarding the services to be
30 covered, the agreement must provide that:

1 (1) benefits will be provided for employees whose services are covered by the agreement and for their
 2 dependents and survivors on the same basis as though the services constituted employment within the meaning
 3 of Title II of the Social Security Act;

4 (2) the agreement must be effective with respect to services in employment covered by the agreement
 5 performed after a date specified in the agreement, but may not be effective with respect to services performed
 6 prior to the first day of the calendar year in which the agreement is entered into or in which the modification of
 7 the agreement making it applicable to services is entered into, except that the effective date may be made
 8 retroactive to the extent permitted by section 218(e) of the Social Security Act, 42 U.S.C. 418(e);

9 (3) all services that constitute employment and are performed by employees of the state must be covered
 10 by the agreement; and

11 (4) all services that constitute employment, are performed by employees of a political subdivision of the
 12 state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved
 13 by the ~~state agency~~ department under Title 19, chapter 1, part 5, must be covered by the agreement."

14

15 **Section 11.** Section 19-1-501, MCA, is amended to read:

16 "**19-1-501. Submission of plan and agreement.** Each political subdivision of the state shall submit for
 17 approval by the ~~state agency~~ department a plan and agreement between the state and the political subdivision
 18 for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of ~~such the~~
 19 act, to employees of such political subdivision."

20

21 **Section 12.** Section 19-1-502, MCA, is amended to read:

22 "**19-1-502. Approval of plan and agreement by state agency department.** (1) A plan and agreement
 23 and any amendment ~~thereof~~ of the plan and agreement ~~shall~~ must be approved by the ~~state agency~~ department
 24 if it ~~the administrator~~ finds that the plan ~~or the plan as amended~~ and agreement, or an amendment to the plan
 25 and agreement, is are in conformity with ~~such the department's~~ requirements ~~as are provided in regulations of~~
 26 ~~the state agency.~~

27 (2) The ~~state agency~~ department may not finally refuse to approve a plan and agreement submitted by
 28 a political subdivision under 19-1-501 and may not terminate an approved plan and agreement without
 29 reasonable notice and opportunity for hearing to the affected political subdivision ~~affected thereby.~~"

30

1 **Section 13.** Section 19-1-503, MCA, is amended to read:

2 **"19-1-503. Required provisions of plan and agreement.** A plan and agreement may not be approved
3 by the department unless:

4 (1) ~~it is~~ they are in conformity with the requirements of the Social Security Act and with the agreement
5 entered into under 19-1-401 and 19-1-402;

6 (2) ~~it provides~~ they provide that all services that constitute employment and that are performed by
7 employees of the political subdivisions will be covered by the plan and agreement, except that ~~it~~ the plan and
8 agreement may exclude services performed by individuals to whom section 218(c)(3)(B) of the Social Security
9 Act, 42 U.S.C. 418(c)(3)(B), is applicable."
10

11 **Section 14.** Section 19-1-702, MCA, is amended to read:

12 **"19-1-702. Contributions by state employees.** (1) Every employee of the state whose services are
13 covered by an agreement entered into under 19-1-401 and 19-1-402 must be required to pay, for the period of
14 coverage, contributions with respect to wages equal to the amount of employee tax that would be imposed by
15 the Federal Insurance Contributions Act if the services constituted employment within the meaning of that act.
16 The liability arises in consideration of the employee's retention in the service of the state or entry into service.

17 (2) The contribution imposed by this section must be collected by deducting the amount of the
18 contribution from wages paid, but failure to make the deduction does not relieve the employee from liability for
19 the contribution.

20 (3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted
21 with respect to any remuneration, proper adjustments or a refund if adjustment is impracticable must be made,
22 without interest, in the manner and at times that the ~~state agency~~ department prescribes."
23

24 **Section 15.** Section 19-1-704, MCA, is amended to read:

25 **"19-1-704. Contribution by political subdivision.** Each political subdivision ~~as to which~~ with a plan ~~has~~
26 ~~been~~ and agreement approved under part 5 of this chapter shall pay, at ~~such~~ the time or times ~~as the state~~
27 ~~agency may prescribe by regulation~~ prescribed by the department, contributions with respect to wages ~~(, as~~
28 defined in 19-1-102), in the amounts and at the rates specified in the applicable agreement entered into by the
29 ~~state agency~~ department director on behalf of the state under 19-1-401 and 19-1-402."
30

1 **Section 16.** Section 19-1-811, MCA, is amended to read:

2 **"19-1-811. Referendum by school district.** ~~A~~ On approval by the board of trustees, a school district
 3 of the state may, ~~upon the approval thereof being voted by the board of trustees,~~ conduct and supervise a
 4 referendum; or may request that the department conduct and supervise a referendum. The referendum must be
 5 conducted pursuant to section 218 of the federal Social Security Act (42 U.S.C. 418); among the members of the
 6 staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes
 7 cast in the referendum ~~indicates~~ indicate that the staff and teachers approve social security coverage, then the
 8 board of trustees shall certify to the department ~~of administration~~ that the conditions for ~~coverage by~~ social
 9 security coverage, required by section 218 of the Social Security Act, have been complied with."

10

11 **Section 17.** Section 19-1-815, MCA, is amended to read:

12 **"19-1-815. Merger of reporting entities.** If the approval of referenda at different times results in the
 13 establishment of two separate social security reporting entities for a high school district and an elementary school
 14 district and the high school building is located in the elementary school district, the ~~state agency~~ department shall,
 15 upon request of the boards of trustees in both districts, merge the two reporting entities to form a single reporting
 16 entity if the elementary school district and high school district:

- 17 (1) have boards of trustees of which a majority of each board is composed of the same persons;
 18 (2) are administered by the same executive officer; and
 19 (3) have payroll calculations made in the same payroll application."

20

21 **Section 18.** Section 19-1-822, MCA, is amended to read:

22 **"19-1-822. Referendum -- institution of higher education.** On request of the president of an institution,
 23 the governor shall ~~designate an agency or individual~~ direct the department to give notice of and supervise a
 24 referendum in the retirement system for that institution in compliance with the requirements prescribed by section
 25 218 of the Social Security Act (42 U.S.C. 418)."

26

27 **Section 19.** Section 19-1-823, MCA, is amended to read:

28 **"19-1-823. Certification by governor.** ~~If the~~ On the department's notification that a majority of votes cast
 29 in the referendum ~~indicates that the majority of voters desire it~~ were cast in favor of participation in social security,
 30 the governor, through the department, shall certify to the secretary of health and human services that the

1 conditions set forth in section 218 of the Social Security Act (42 U.S.C. 418) have been complied with in respect
2 to the retirement system voting in the referendum."

3

4 **Section 20.** Section 19-1-824, MCA, is amended to read:

5 **"19-1-824. Federal-state agreement.** ~~Upon~~ On certification, the governor shall ~~designate an official~~
6 ~~direct the department director~~ to enter into ~~an agreement or a modification or supplement to an the~~ existing
7 agreement ~~or both a modification and a supplement~~ with the appropriate officers of the federal government,
8 pursuant to section 218 of the Social Security Act (42 U.S.C. 418), to secure coverage ~~thereunder~~ for the
9 retirement system with respect to which certification has been made. An agreement may be made retroactive to
10 the extent permissible under the Social Security Act."

11

12 **Section 21.** Section 19-1-826, MCA, is amended to read:

13 **"19-1-826. Changes in federal law.** In the event that any relevant provisions of federal law are amended
14 or superseded, then the provisions ~~hereof~~ of this part ~~which that~~ relate to ~~such the~~ law shall must be applied to
15 the amended law or the superseding law."

16

- END -