

SENATE BILL NO. 121

INTRODUCED BY E. BUTTREY

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT BONA FIDE VOLUNTEER POSITIONS ARE NOT REPORTABLE TO THE TEACHERS' RETIREMENT SYSTEM; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTION 19-20-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 19-20-302, MCA, is amended to read:

**"19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons employed by an employer must be active members of the retirement system:

- (a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;
- (b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the university system retirement program under Title 19, chapter 21;
- (c) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school psychologist;
- (d) a person employed in a teaching or an educational services capacity by the office of a county superintendent, an education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;
- (e) a person who is an administrative officer or a member of the instructional staff of the board of public education;
- (f) the superintendent of public instruction or a person employed as a teacher or in an educational services capacity by the office of public instruction;
- (g) except as provided in subsection (2), a person elected to the office of county superintendent of schools;
- (h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and

1 (i) a person employed in a nonclerical position and who is reported on an employer's annual data  
2 collection report submitted to the office of public instruction.

3 (2) A retired member elected to the office of county superintendent of schools or appointed to complete  
4 the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership  
5 in the public employees' retirement system under the provisions of 19-3-412 or 19-3-413 and shall, within 30 days  
6 of taking office, file an irrevocable written election to become or to not become an active member of the teachers'  
7 retirement system. The retirement system membership of an elected county superintendent of schools as of June  
8 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county  
9 superintendent of schools.

10 (3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

11 (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal  
12 year; and

13 (b) have the compensation for the person's creditable service totally paid by an employer.

14 (4) (a) A substitute teacher or a part-time teacher's aide:

15 (i) shall file an irrevocable written election determining whether to become an active member of the  
16 retirement system on the first day of employment; or

17 (ii) is required to become an active member of the retirement system after completing 210 hours of  
18 employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership  
19 under subsection (4)(a)(i).

20 (b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member  
21 as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute  
22 teacher is required to remain a member as long as the teacher is available for employment in that capacity.

23 (c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the  
24 first day of employment of the option to elect membership under subsection (4)(a)(i).

25 (d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election  
26 period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership  
27 and the employer shall retain the statement.

28 (5) A school district clerk or business official may not become a member of the teachers' retirement  
29 system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to  
30 remain an active member of the system while employed in that capacity, and any postretirement earnings from

1 employment as a school district clerk or school business official are subject to the limit on earnings provided in  
2 19-20-731.

3 (6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the  
4 retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must  
5 be treated alike.

6 (7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours  
7 a day assisting a certified teacher in a classroom.

8 (8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b)  
9 may not elect to participate in the university system retirement program under Title 19, chapter 21.

10 (b) An employee of the Montana university system who is a participant in the university system retirement  
11 program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a)  
12 or (1)(c) through (1)(i) is ineligible to be an active member of this system.

13 (9) (a) A position is not reportable to the retirement system if the position is a bona fide volunteer  
14 position.

15 (b) A position is a bona fide volunteer position if all of the following criteria are met:

16 (i) The individual in the position receives no salary, stipend, remuneration of any kind, reimbursement  
17 of expenses, or in-kind benefits or services for service in the position. Employer payments of premiums for  
18 required insurance coverage directly related to the volunteer service, such as workers' compensation coverage  
19 or personal or professional liability coverage, does not constitute remuneration.

20 (ii) The position was not a paid position with the employer within the 12 months prior to being designated  
21 as a volunteer position by the employer.

22 (iii) The position does not become a paid position for at least 12 months following the employer's  
23 designation of the position as a volunteer position.

24 (iv) The employer does not have any other individual working as a paid employee in the same position  
25 while the position is designated as a volunteer position.

26 (v) The individual in the position does not perform work in the volunteer position in excess of:

27 (A) 4 hours in a day, 12 hours in a week, and 312 hours in a fiscal year if the service is performed during  
28 regular business days of the employer; or

29 (B) 312 hours in a fiscal year if the service is performed primarily at times other than during regular  
30 business days of the employer.

1           (c) The retirement system may require the employer to provide information and documentation to verify  
2 that a position designated as a volunteer position meets all requirements set forth in this subsection (9)."

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4           NEW SECTION. Section 2. Effective date. [This act] is effective July 1, 2017.

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