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HOUSE BILL NO. 135  
INTRODUCED BY M. BERTOGLIO  
BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; ESTABLISHING INDEPENDENT CONTRACTOR STATUS; CLARIFYING DUTIES OF EMPLOYERS; REVISING THE TRANSFER OF SERVICE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING THE PURCHASE OF THE FIRST 210 HOURS OF SERVICE; REVISING THE REDEPOSIT OF CONTRIBUTIONS PREVIOUSLY WITHDRAWN FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING EARNED COMPENSATION LIMITATIONS; REVISING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; CLARIFYING THE CALCULATION OF AVERAGE FINAL COMPENSATION; CLARIFYING THE MEDICAL EXAMINATION OF A DISABILITY RETIREE; CLARIFYING PAYMENTS ON THE DEATH OF A RETIREE; AMENDING SECTIONS 19-20-208, 19-20-409, 19-20-417, 19-20-427, 19-20-715, 19-20-719, 19-20-805, 19-20-901, 19-20-903, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Presumption of common law employee status -- establishing independent contractor status.** (1) (a) An individual working in a position reportable to the retirement system is presumed to be a common law employee of the employer and not an independent contractor.

(b) Until the status of an individual working in a position reportable to the retirement system is conclusively established to be that of an independent contractor, the individual must be reported to the retirement system as an active member or working retiree, as appropriate, not as an independent contractor.

(2) (a) An employer who asserts that an individual working in a position reportable to the retirement system is an independent contractor shall conclusively establish that the individual is an independent contractor and not a common law employee of the employer by application of the internal revenue service criteria set forth in internal revenue service publication 15-A.

- 1 (b) The presumption of common law employee status may be rebutted by:
- 2 (i) a written determination prepared by an attorney, an employment or human resources
- 3 professional, or another individual who is qualified to make worker status determinations;
- 4 (ii) an order of a court of competent jurisdiction; or
- 5 (iii) internal revenue service form SS-8.
- 6 (c) (i) An individual making the determination must provide with their written determination their full
- 7 name, professional designations, business name, business address, and business telephone number.
- 8 (ii) The written determination or order must comprehensively address the internal revenue service
- 9 criteria related to the facts and circumstances of the specific worker in the specific position at issue and must
- 10 provide a reasoned discussion of each criterion and its application to the specific facts and circumstances of the
- 11 work and the position, not merely provide a conclusory statement of finding.
- 12 (d) The presumption of common law employee status is not rebutted by the issuance of an
- 13 independent contractor exemption certificate by the Montana department of labor or by any certification or
- 14 determination issued by any federal or state agency unless the determination meets all of the requirements of
- 15 this subsection (2).
- 16 (e) If the retirement system is not satisfied that independent contractor status under the internal
- 17 revenue service criteria is conclusively established by the determination or order submitted, the retirement
- 18 system shall require the employer to obtain a determination of worker's status from the internal revenue service
- 19 pursuant to the internal revenue service form SS-8 process.
- 20 (3) Any costs incurred to conclusively establish the independent contractor status of an individual
- 21 working in a position reportable to the retirement system, as specified in this section, must be the sole
- 22 responsibility of the employer.

23

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

25 **"19-20-208. Duties and liability of employer.** (1) Each employer shall:

- 26 (a) (i) each month, report the name, social security number, time worked, and gross earnings of
- 27 each employed member; and
- 28 (ii) pick up the contributions of each employed member at the rate prescribed pursuant to 19-20-

1 602 and 19-20-608; and transmit the contributions to the executive director of the retirement board;

2 (b) transmit to the ~~executive director of the retirement board~~ system the employer's contributions  
3 prescribed by 19-20-605 and 19-20-609; at the time that the employee contributions are transmitted;

4 (c) keep records and, as required by the retirement ~~board~~ system, furnish information ~~to the board~~  
5 that is required in the discharge of the ~~board's retirement system's~~ duties, including financial, personal services,  
6 or other information or documentation requested by the retirement system to verify proper retirement system  
7 reporting and contribution remittance related to any individual hired by, working for, or paid by the employer,  
8 whether as a common law employee, an independent contractor, an employee or contractor of a third party, a  
9 volunteer, or in any other capacity;

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

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

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

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

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

23 ~~(3)(2)~~ (2) An employer shall submit a wage and contribution report to the retirement system every month,  
24 including for any month in which the employer does not pay compensation reportable to the retirement system."  
25

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

27 **"19-20-409. Transfer of service credits and contributions from public employees' retirement**  
28 **system.** (1) (a) An active member may at any time before retirement file a written application with the

1 ~~retirement board~~ teachers' retirement system to ~~purchase-transfer~~ all of the member's previous service credit in  
 2 then on account with the public employees' retirement system to the teachers' retirement system if the following  
 3 requirements are met:

4 (i) the member is eligible to withdraw from the public employees' retirement system; and

5 (ii) member and employer contributions are directly transferred from the public employees'  
 6 retirement system to the teachers' retirement system as provided in subsections (1)(b) and (1)(c).

7 ~~. The amount that must be paid to the retirement system to purchase this service under this section is~~  
 8 ~~the sum of subsections (2) and (3).~~

9 ~~(2)(b)~~ The public employees' retirement system shall transfer employer contributions to the teachers'  
 10 retirement system in an amount equal to 72% of the amount paid by the of member contributions and accrued  
 11 interest to be transferred as provided in subsection (1)(c).

12 ~~(3)(c)~~ The member shall pay either directly or by public employees' retirement system transferring  
 13 contributions on account with the public employees' retirement system an amount equal to the member's  
 14 accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest  
 15 must be calculated from the date of termination shall transfer member contributions to the teachers' retirement  
 16 system in an amount equal to the total amount of the member's contributions then on account with the public  
 17 employees' retirement system, plus all interest accrued on the member contributions from the date of deposit  
 18 until the date the a transfer is received by the teachers' retirement system. Interest must be based on the  
 19 interest tables in use by the public employees' retirement system.

20 ~~(d)~~ (i) On completion of the transfer, the teachers' retirement system shall credit the member with  
 21 creditable service equal to the service credit that had been on account with the public employees' retirement  
 22 system, subject to limitation as provided in 19-20-401(9).

23 ~~(ii)~~ The transferred service credit must count toward vesting in a benefit with the teachers'  
 24 retirement system. If, at the time of retirement, the member does not have sufficient years of membership  
 25 service with the teachers' retirement system to calculate the members' average final compensation under plan  
 26 terms, compensation must be credited to the period of transferred service credit necessary to calculate the  
 27 member's average final compensation as provided in 19-20-805(4).

28 ~~(4)(iii)~~ A member who purchases transfers service from the public employees' retirement system in

1 the teachers' retirement system must have completed 5 years of membership service in the teachers'  
2 retirement system to be eligible to receive creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-  
3 20-408, 19-20-410, or 19-20-426.

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

5 ~~(6) If an active member who also has service credit in the public employees' retirement system before~~  
6 ~~becoming a member of the teachers' retirement system dies before purchasing this service in the teachers'~~  
7 ~~retirement system and if the member's service credits from both systems, when combined, entitle the member's~~  
8 ~~beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system.~~  
9 ~~Before payment of the death benefit, the public employees' retirement board must transfer to the teachers'~~  
10 ~~retirement system the contributions necessary to purchase this service in the teachers' retirement system as~~  
11 ~~provided in subsections (2) and (3).~~

12 (2) (a) The beneficiary of a member of the teachers' retirement system who dies while an active  
13 member and while also having service credit on account with the public employees' retirement system may  
14 apply to have the deceased member's service transferred from the public employees' retirement system to the  
15 teachers' retirement system if the following requirements are met:

16 (i) the member had not previously retired under either retirement system;

17 (ii) the member was not vested in a benefit with either retirement system at the time of death;

18 (iii) the member's creditable service following transfer will entitle the beneficiary to receive a  
19 survivor benefit from the teachers' retirement system in the form of a monthly benefit payable for the  
20 beneficiary's lifetime;

21 (iv) at least one eligible beneficiary will elect the lifetime benefit;

22 (v) each beneficiary entitled to payment on behalf of the deceased member from either retirement  
23 system prior to transfer must be an individual and must also be a beneficiary entitled to payment on behalf of  
24 the deceased member from the other retirement system; and

25 (vi) the transfer of service credit from the public employees' retirement system must constitute a full  
26 withdrawal of the deceased member's service credit from the public employees' retirement system.

27 (b) Member and employer contributions must be transferred directly from the public employees'  
28 retirement system to the teachers' retirement system as provided in subsections (1)(b) and (1)(c).

1           (c) (i) On completion of the transfer, the teachers' retirement system shall credit the member with  
 2 creditable service equal to the service credit that had been on account with the public employees' retirement  
 3 system.

4           (ii) If the member does not have sufficient years of membership service with the teachers'  
 5 retirement system to calculate the member's average final compensation under plan terms, compensation must  
 6 be credited to the period of transferred service credit necessary to calculate the member's average final  
 7 compensation as provided in 19-20-805(4).

8           ~~(7)(3)~~ (a) If the teachers' retirement ~~board~~ system determines that an individual's membership was  
 9 erroneously classified and reported to the public employees' retirement system, the public employees'  
 10 retirement ~~board~~ system shall transfer to the teachers' retirement system the member's accumulated  
 11 contributions and service, together with employer contributions plus interest.

12           (b) For the period of time that the employer contributions are held by the public employees'  
 13 retirement system, interest paid on employer contributions transferred under this subsection ~~(7)-(3)~~ must be  
 14 calculated at the short-term investment pool rate earned by the board of investments in the fiscal year  
 15 preceding the transfer request.

16           (c) Any employee and employer contributions due as calculated in 19-20-602, 19-20-605, 19-20-  
 17 608, and 19-20-609, plus interest, are the liability of the employee and the ~~employing entity~~ employer where the  
 18 error occurred.

19           ~~(8)(4)~~ A member who participated in the public employees' retirement system defined contribution  
 20 plan provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a  
 21 participant in the defined contribution plan if:

22           (a) the member is vested in the teachers' retirement system and has completed at least 1 full year  
 23 of active membership in the teachers' retirement system following the member's public employees' retirement  
 24 system service;

25           (b) for each full year or portion of a year to be purchased pursuant to this subsection ~~(8)~~ (4), the  
 26 member contributes the actuarial cost of the service based on the most recent valuation of the system; and

27           (c) the member has withdrawn the member's money in the member's public employees' retirement  
 28 system defined contribution plan account or has rolled over the amount required to purchase service in

1 accordance with this subsection ~~(8)~~ (4).

2 ~~(9)~~(5) Creditable service purchased under subsection ~~(8)~~ (4) must be determined according to the  
3 laws and rules governing service credit in the public employees' retirement system."

4

5 **Section 4.** Section 19-20-417, MCA, is amended to read:

6 **"19-20-417. Credit for substitute teaching service, teacher's aide service, or other service not**

7 **reported.** (1) A substitute teacher or part-time teacher's aide ~~who did not elect membership~~ who has filed an  
8 irrevocable election with their employer not to participate in the retirement system for the first 210 hours of  
9 service under 19-20-302 and who subsequently becomes a member within the same fiscal year must be  
10 awarded creditable service for the first 210 hours of service ~~not reported~~ if the member contributes the  
11 employee and employer contributions that would have been made if the member had been a member from the  
12 ~~date of hire~~ first date of service in that fiscal year, plus interest at the current actuarial assumed rate of  
13 investment return.

14 (2) A person who was employed in a capacity that would have been eligible for membership  
15 except for the fact that the person was employed for less than 30 days and who subsequently becomes an  
16 active member within the same fiscal year may purchase ~~this service~~ the first 30 days of service if the ~~person~~  
17 member contributes the employee and employer contributions that would have been made if the person had  
18 been a member from the ~~date of hire~~ first date of service in that fiscal year, plus interest at the current actuarial  
19 assumed rate of investment return.

20 (3) If an employer fails to report a person who was eligible for membership under 19-20-302, the  
21 employee and employer shall make the contributions required by this chapter, plus interest at the current  
22 actuarial assumed rate of investment return.

23 (4) The contributions and interest may be made in a lump-sum payment or in installments as  
24 agreed to between the person and the board.

25 (5) Only one service purchase may be made by any member under subsection (1) or (2)."

26

27 **Section 5.** Section 19-20-427, MCA, is amended to read:

28 **"19-20-427. Redeposit of contributions previously withdrawn.** (1) Except as provided in

1 subsection (3), in addition to the contributions required under 19-20-602 and 19-20-608, subject to the approval  
2 of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a  
3 member may redeposit in the annuity savings account, by a single payment or by an increased rate of  
4 contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus  
5 interest paid as follows:

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

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

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

11 (3) A member may not redeposit contributions previously withdrawn under this chapter after  
12 retirement benefit payments to the member have started, even if the member returns to active member status.

13 (4) Except as provided in subsection (3), in addition to the contributions required under 19-20-602  
14 and 19-20-908, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3)  
15 of the Internal Revenue Code, an active member may purchase service credit previously accrued and  
16 withdrawn from the Montana public employees' retirement system by redeposit directly to the teachers'  
17 retirement system, subject to the following:

18 (a) the member is not an active member or an inactive member of the public employees' retirement  
19 system;

20 (b) the member has not previously used or transferred the same period of service withdrawn from  
21 the public employees' retirement system to purchase service in any other public retirement system;

22 (c) member and employer contributions and interest must be paid to the teachers' retirement  
23 system as follows:

24 (i) The member shall remit member contributions in an amount equal to the sum of the  
25 accumulated contributions that were refunded to the individual at the individual's last termination of membership  
26 in the public employees' retirement system plus interest at the actuarially assumed interest rate of the teachers'  
27 retirement system in effect on the date the written application is signed. Interest must be calculated from the  
28 date of refund from the public employees' retirement system until paid in full to the teachers' retirement system.



1           (ii) The public employees' retirement system shall transfer employer contributions to the teachers'  
 2 retirement system in an amount equal to 72% of the member contributions and interest payable by the member  
 3 as provided in subsection (4)(c)(i).

4           (d) a member who purchases service from the public employees' retirement system in the  
 5 teachers' retirement system must have completed 5 years of membership service in the teachers' retirement  
 6 system to be eligible to receive creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-  
 7 20-410, or 19-20-426."

8

9           **Section 6.** Section 19-20-715, MCA, is amended to read:

10           **"19-20-715. Earned compensation -- limitations.** (4) Compensation in excess of the limitations set  
 11 forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be  
 12 disregarded for individuals who are not eligible employees. The limitation on compensation for eligible  
 13 employees may not be less than the amount that was allowed to be taken into account under this chapter on  
 14 July 1, 1993. For the purposes of this section, an eligible employee is an individual who was a member in the  
 15 retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the  
 16 Internal Revenue Code must be applied prospectively.

17           ~~(2) (a) The earned compensation reported in each year that is used to make up the average final~~  
 18 ~~compensation may not be greater than 110% of the previous year's reported earned compensation, not~~  
 19 ~~including increases that result from movement on the employer's adopted salary matrix.~~

20           ~~(b) Earned compensation in excess of the amount specified in subsection (2)(a) is considered~~  
 21 ~~termination pay and must be included in the calculation of average final compensation as provided in 19-20-~~  
 22 ~~746 (4)(b)."~~

23

24           **Section 7.** Section 19-20-719, MCA, is amended to read:

25           **"19-20-719. Guaranteed annual benefit adjustment -- rulemaking.** (1) On January 1 of each year,  
 26 the retirement allowance payable to each tier one member or benefit recipient of a tier one member who is  
 27 eligible under subsection (3) must be increased by 1.5%~~the amount provided in either subsection (1)(a) or~~  
 28 ~~(1)(b) as follows:~~

1           ~~(a) if the most recent actuarial valuation of the retirement system shows that retirement system~~  
2 ~~liabilities are less than 90% funded, 0.5%; or~~

3           ~~(b) if the most recent actuarial valuation of the retirement system shows that retirement system~~  
4 ~~liabilities are at least 90% funded and the provision of the increase is not projected to cause the system's~~  
5 ~~liabilities to be less than 85% funded, an amount greater than 0.5% but no more than 1.5%, as set by the~~  
6 ~~retirement board.~~

7           (2) On January 1 of each year, the retirement allowance payable to each tier two member or  
8 benefit recipient of a tier two member who is eligible under subsection (3) must be increased by the amount  
9 provided in either subsection (2)(a) or (2)(b) as follows: ~~if the most recent actuarial valuation of the retirement~~  
10 ~~system shows that retirement system liabilities are at least 90% funded and the provision of the increase is not~~  
11 ~~projected to cause the system's liabilities to be less than 85% funded, be increased by an amount equal to or~~  
12 ~~greater than 0.5% but no more than 1.5%, as set by the retirement board.~~

13           (a) if the most recent actuarial valuation of the retirement system shows that retirement system  
14 liabilities are less than 90% funded, 0.5%; or

15           (b) if the most recent actuarial valuation of the retirement system shows that retirement system  
16 liabilities are at least 90% funded and the provision of the increase is not projected to cause the system's  
17 liabilities to be less than 85% funded, an amount greater than 0.5% but no more than 1.5%, as set by the  
18 retirement board.

19           (3) A benefit recipient is eligible for and must receive the annual benefit adjustment provided for in  
20 this section if at least 36 monthly retirement benefit payments have been made prior to January 1 of the year in  
21 which the adjustment is to be made."

22

23           **Section 8.** Section 19-20-805, MCA, is amended to read:

24           **"19-20-805. Calculation of average final compensation.** (1) Except as limited by this section,  
25 average final compensation is calculated by averaging the earned compensation paid to:

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

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

1 average.

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

7 (b) The earned compensation of a tier two member who retires under 19-20-802, 19-20-804, or 19-  
8 20-902 and has less than 5 consecutive years of full-time service during the 7 years immediately preceding the  
9 member's termination is the compensation that the member would have earned in the 5 years used to calculate  
10 average final compensation had the member's part-time service during the 7 years preceding termination been  
11 full-time service.

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

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

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

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

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

4 (5) (a) The earned compensation reported in each year that is used to calculate the average final  
 5 compensation may not be greater than 110% of the earned compensation for the next prior year of service  
 6 reported to the teachers' retirement system. This limitation does not apply to an increase that results from  
 7 movement on the employer's adopted salary matrix but does apply to an increase that results from additions to  
 8 or adjustments of the employer's salary matrix or initial implementation of a salary matrix.

9 (b) Earned compensation in excess of the amount specified in subsection (5)(a) must be included  
 10 in the calculation of average final compensation in the same manner as termination pay option 2 as provided in  
 11 19-20-716(1)(b)."

12

13 **Section 9.** Section 19-20-901, MCA, is amended to read:

14 **"19-20-901. Eligibility for disability retirement -- determination by board.** (1) Except as provided  
 15 in subsection (5), upon the application of a member or of the member's employer for a disability retirement  
 16 allowance, any member who has 5 or more years of creditable service and who has become disabled while  
 17 being an active member may be retired by the retirement board the month immediately following the month in  
 18 which employment is terminated.

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

24 (3) In making a determination under subsection (2), the retirement board or its representative may:

25 (a) order examinations by a physician, psychologist, or vocational rehabilitation counselor, or any  
 26 other health care provider or other professional determined by the retirement board to be qualified, competent,  
 27 and necessary to assist the board in making the disability determination;

28 (b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official

1 acts; and

2 (c) issue subpoenas to compel the attendance of witnesses and the production of books, papers,  
3 correspondence, memorandums, and other records considered necessary as evidence in connection with a  
4 claim for disability retirement. The subpoenas issued under this subsection (3)(c) are enforceable as provided  
5 in 2-4-104.

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

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

10 (b) A disability retirement application filed by a member who is ineligible for disability retirement  
11 under subsection (5)(a) will be processed as an application for a service retirement allowance."  
12

13 **Section 10.** Section 19-20-903, MCA, is amended to read:

14 **"19-20-903. Medical examination of disability retiree.** (1) Once each year during the first 5 years  
15 following the retirement of a member on a disability retirement allowance and once in every 3-year period  
16 ~~thereafter~~ afterward, the retirement board may require a disability benefit recipient who has not yet attained the  
17 age of 60 to undergo a medical examination by a physician, psychologist, or any other health care provider or  
18 other professional determined by the retirement board to be qualified, competent, and necessary to assist the  
19 board in making the disability determination ~~or physicians designated by the retirement board~~. The examination  
20 must be made at the place of residence of the benefit recipient or other place mutually agreed ~~upon~~ on. Based  
21 on the examination, the board shall determine whether the disabled member is unable, by reason of physical or  
22 mental incapacity, to perform the essential elements of the position held by the member when the member  
23 retired. If the board determines that the member is not incapacitated, the member's retirement benefit must be  
24 canceled. If the member disagrees with the board's determination, the member may request the board to  
25 reconsider its action. The request for reconsideration must be made in writing within 60 days after the receipt of  
26 the notice of the status change.

27 (2) A member whose disability retirement benefit is canceled because the board has determined  
28 that the member is no longer incapacitated must be given preference by the member's former employer for the

1 position held at the time of retirement or for a comparable position that becomes available within 1 year of  
 2 cancellation of the disability retirement. The member may agree to accept an offer of employment by an  
 3 employer. Employment in any capacity by an employer terminates any right granted by this section. The fact  
 4 that the former employee was retired on disability may not prejudice any right to reinstatement to duty that the  
 5 former employee may have or claim to have. This section does not affect any requirement for the former  
 6 employee to meet or to be able to meet professional certification and licensing standards unrelated to the  
 7 previous disability, otherwise necessary for reinstatement to duty.

8 (3) If a disability benefit recipient who has not yet attained the age of 60 refuses to submit to a  
 9 medical examination as required in subsection (1), the recipient's allowance may be discontinued until  
 10 withdrawal of the refusal. If a refusal continues for 1 year, all rights in and to a disability pension may be  
 11 revoked by the retirement board."

12

13 **Section 11.** Section 19-20-1001, MCA, is amended to read:

14 **"19-20-1001. Payments upon death of member prior to retirement.** (1) If a member dies before  
 15 retirement:

16 (a) except as provided in subsection (2), a lump-sum refund of the member's account balance must  
 17 be paid to the member's eligible beneficiary or beneficiaries;

18 (b) if the deceased member was vested and was an active member in the retirement system within 1  
 19 year before the member's death, the eligible beneficiaries receiving a refund under subsection (1)(a) or a  
 20 retirement allowance under subsection (2) are entitled to receive in equal shares a \$500 lump-sum death  
 21 benefit; and

22 (c) subject to 19-20-1009, the sum of \$200 a month must be paid to each minor child of the deceased  
 23 member until the child reaches 18 years of age.

24 (2) (a) In lieu of the refund provided for in subsection (1)(a), if the deceased member was vested, an  
 25 eligible designated beneficiary who is an individual may elect to receive the beneficiary's interest as a  
 26 retirement allowance for the beneficiary's lifetime. The retirement allowance must be determined as prescribed  
 27 in 19-20-804, without reference to ~~19-20-715(2)(a)~~ 19-20-805(5)(a), in the same manner as if the member  
 28 elected the option A joint and survivor annuity optional allowance provided for in 19-20-702(2).

1 (b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:  
2 (i) the first of the month following the date of death; or  
3 (ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system  
4 before the member's death.

5 (c) (i) If more than one eligible beneficiary elects to receive a retirement allowance, each is entitled to  
6 an equal share of the benefit.

7 (ii) In the event that all eligible beneficiaries who elected a retirement allowance die, the member's  
8 account balance, if any, will be paid out to the alternate beneficiary of the last surviving eligible beneficiary who  
9 elected a retirement allowance under subsection (2)(a)."

10

11 **Section 12.** Section 19-20-1002, MCA, is amended to read:

12 **"19-20-1002. Payments ~~upon~~ on death of retiree.** (1) In the event of the death of a retired member:

13 (a) a lump-sum death benefit of \$500 is payable to the joint annuitant or in equal shares to the  
14 deceased retiree's eligible beneficiary or beneficiaries receiving benefits under either subsection (2), (3), or (4)  
15 and is in addition to those benefits or, if there is no continuing benefit payable, to the deceased retiree's  
16 designated or alternate beneficiary; and

17 (b) subject to 19-20-1009, the sum of \$200 a month must be paid to each minor child of the  
18 deceased retiree until the child reaches 18 years of age.

19 (2) If the member was receiving a normal form retirement allowance, a lump-sum refund of the  
20 member's account balance, if any, must be paid to the eligible beneficiary or beneficiaries in equal shares.

21 (3) If the member was receiving a joint and survivor annuity optional retirement allowance:

22 (a) monthly benefits must continue to be paid to the joint annuitant; or

23 (b) if there is no surviving joint annuitant, a lump-sum refund of the member's account balance, if  
24 any, must be paid to the member's alternate beneficiary or beneficiaries in equal shares.

25 (4) If the retired member was receiving a 10-year or 20-year period certain retirement allowance,  
26 until the period has expired:

27 (a) if the eligible beneficiary is one or more individuals, the monthly benefits must continue to be  
28 paid to the eligible beneficiary or beneficiaries in equal shares. If there is more than one eligible beneficiary,

1 upon the death of one eligible beneficiary, the benefit amount payable to the deceased beneficiary must be  
2 redistributed in equal shares to the surviving eligible beneficiaries. If all eligible beneficiaries die before the  
3 period has expired, a lump-sum amount actuarially determined to be the present value of all monthly benefits  
4 remaining to be paid over the period must be paid to the alternate beneficiary of the last surviving eligible  
5 beneficiary.

6 (b) if the eligible beneficiary is the deceased retiree's estate or trust, a lump-sum amount  
7 actuarially determined to be the present value of all monthly benefits remaining to be paid over the period must  
8 be paid to the eligible beneficiary.

9 (5) (a) Not including any minor child benefit of \$200 a month payable under subsection (1)(b), if  
10 the only amount remaining payable on the account of a deceased retiree is the \$500 death benefit and there  
11 are multiple individuals who are eligible designated or alternate beneficiaries to share in the \$500 death benefit,  
12 any of the potential beneficiaries must be considered to have fully and irrevocably renounced their rights and  
13 interest to a share of the \$500 death benefit when the following criteria are met:

14 (i) the retirement system is unable to identify or locate the individual;

15 (ii) if identified and located, the retirement system mailed notice of the beneficiary interest and  
16 required application materials to be completed and returned by the individual on two occasions at least 30 days  
17 apart and the individual failed to complete and return the required application materials to be received by the  
18 retirement system within 30 days of the second mailing by the retirement system;

19 (iii) at least one eligible beneficiary has completed and returned the required application materials  
20 to the retirement system;

21 (iv) at least 180 days has passed following the death of the retiree and, if required application  
22 materials were sent to the individual as described in subsection (5)(a)(ii), at least 30 days has passed since the  
23 date of the second mailing by the retirement system; and

24 (v) the retirement system has not received actual notice of formal or informal probate of the  
25 deceased retiree's estate.

26 (b) Any portion of the \$500 death benefit may not be distributed until the total benefit can be  
27 distributed. The share of the \$500 death benefit that would have been payable to a potential beneficiary  
28 considered to have renounced their interest under this provision must be distributed in equal shares to an



1 eligible beneficiary who has been identified and located and who has completed and returned the required  
 2 application materials. Distribution of the \$500 death benefit to an eligible beneficiary is satisfaction in full of the  
 3 retirement system's obligation for distribution of the \$500 death benefit.

4 (c) This subsection (5) does not require the retirement system to distribute the \$500 death benefit  
 5 strictly within the timeframe specified or prohibit the retirement system from providing any additional process  
 6 the retirement system believes to be reasonable and appropriate to identify, locate, and obtain required  
 7 application materials from an eligible beneficiary."

8  
 9 **NEW SECTION. Section 13. Codification instruction.** [Section 1] is intended to be codified as an  
 10 integral part of Title 19, chapter 20, part 3, and the provisions of Title 19, chapter 20, part 3, apply to [section 1].

11  
 12 **NEW SECTION. Section 14. Effective dates.** (1) Except as provided in subsection (2), [this act] is  
 13 effective July 1, 2023.

14 (2) [Sections 1, 3, and 5] are effective July 1, 2024.

15  
 16 **NEW SECTION. Section 15. Retroactive applicability.** [Section 7] applies retroactively, within the  
 17 meaning of 1-2-109, to all guaranteed annual benefit adjustment increases on or after July 1, 2013.

18 - END -