

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A GRADED VESTING SYSTEM FOR PUBLIC
5 EMPLOYEES THAT APPLIES TO DEFINED BENEFIT PLANS AND THE DEFINED CONTRIBUTION PLAN;
6 AMENDING SECTIONS 19-2-303 AND 19-3-2116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
7 DATE AND A RETROACTIVE APPLICABILITY DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 19-2-303, MCA, is amended to read:

12 **"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems
13 subject to this chapter, the following definitions apply:

14 (1) "Accumulated contributions" means the sum of all the regular and any additional contributions
15 made by a member in a defined benefit plan, together with the regular interest on the contributions.

16 (2) "Active member" means a member who is a paid employee of an employer, is making the
17 required contributions, and is properly reported to the board for the most current reporting period.

18 (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory
19 manner to represent the present value of the benefits to be derived from the additional service to be credited
20 based on the most recent actuarial valuation for the system and the age, years until retirement, and current
21 salary of the member.

22 (4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the
23 mortality table and interest rate assumptions adopted by the board.

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

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

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

1 (8) "Annuity" means:

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

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

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

10 (10) "Benefit" means:

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

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

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

17 (12) "Contingent annuitant" means:

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

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

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

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

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

27 (16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the
28 public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this

1 title and that is not a defined benefit plan.

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

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

7 (19) "Direct rollover" means a payment by the retirement plan to the eligible retirement plan
8 specified by the distributee or a payment from an eligible retirement plan to the retirement plan specified by the
9 distributee.

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

14 (21) "Distributee" means:

15 (a) a member;

16 (b) a member's surviving spouse;

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

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

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

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

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

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

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

2 (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

3 (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal

4 Revenue Code, 26 U.S.C. 403(b);

5 (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code,

6 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or

7 instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts

8 transferred into that plan from a plan under this title; or

9 (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code,

10 26 U.S.C. 408A.

11 (24) "Eligible rollover distribution":

12 (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of

13 the distributee, as provided in 19-2-1011;

14 (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former

15 spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal

16 Revenue Code, 26 U.S.C. 414(p).

17 (25) "Employee" means a person who is employed by an employer in any capacity and whose

18 salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for

19 paying retirement contributions pursuant to 7-11-105.

20 (26) "Employer" means a governmental agency participating in a retirement system enumerated in

21 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as

22 responsible for paying retirement contributions pursuant to 7-11-105.

23 (27) "Essential elements of the position" means fundamental job duties. An element may be

24 considered essential because of but not limited to the following factors:

25 (a) the position exists to perform the element;

26 (b) there are a limited number of employees to perform the element; or

27 (c) the element is highly specialized.

28 (28) "Excess earnings" means the difference, if any, between reported compensation and the limits

1 provided in 19-2-1005(2) used to calculate a member's highest average compensation or final average
2 compensation.

3 (29) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the
4 following June 30.

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

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

8 (32) "Member" means either:

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

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

13 (33) "Membership service" means the periods of service that are used to determine eligibility for
14 retirement or other benefits.

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

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

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

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

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

26 (38) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll
27 covered by the defined contribution plan members that is allocated to the public employees' retirement system's
28 defined benefit plan pursuant to 19-3-2117 to actuarially fund the unfunded liabilities and the normal cost rate

1 changes in a defined benefit plan resulting from member selection of the defined contribution plan.

2 (39) "Regular contributions" means contributions required from members under a retirement plan.

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

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

5 (a) terminated from service; and

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

7 (42) "Retirement account" means an individual account within the defined contribution retirement

8 plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a

9 member of the defined contribution plan or the member's beneficiary.

10 (43) "Retirement benefit" means:

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

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

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

17 (45) "Retirement system" or "system" means one of the public employee retirement systems
18 enumerated in 19-2-302.

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

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

23 (48) "Service retirement benefit" means the retirement benefit that the member may receive at
24 normal retirement age.

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

28 (50) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement

1 plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to
2 the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or
3 otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the
4 unfunded actuarial liabilities of the retirement plan.

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

7 (52) "Termination of employment", "termination from employment", "terminated employment",
8 "terminated from employment", "terminate employment", or "terminates employment" means that:

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

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

13 (53) "Termination of service", "termination from service", "terminated from service", "terminated
14 service", "terminating service", or "terminates service" means that:

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

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

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

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

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

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

- 1 (a) the member's contribution account;
- 2 (b) the vested portion of the employer's contribution account; and
- 3 (c) the member's account for other contributions.

4 (56) "Vested member" or "vested" means:

5 (a) with respect to a defined benefit plan, except as provided in subsection ~~(56)(b)~~ (56)(c), a
6 member or the status of a member who was hired on or before December 31, 2022, has at least 5 years of
7 membership service;

8 (b) with respect to a defined benefit plan, except as provided in subsection (56)(c), a member or
9 the status of a member who was hired on or after January 1, 2023, must be vested on a graded schedule as
10 follows:

- 11 (i) 20% vested after 2 years of employment;
- 12 (ii) 40% vested after 3 years of employment;
- 13 (iii) 60% vested after 4 years of employment;
- 14 (iv) 80% vested after 5 years of employment; and
- 15 (v) 100% vested after 6 years of employment;

16 ~~(b)(c)~~ with respect to a member of the highway patrol officers' retirement system established in Title
17 19, chapter 6, who was hired on or after July 1, 2013, a member or the status of a member who has at least 10
18 years of membership service; or

19 ~~(c)(d)~~ with respect to the defined contribution plan, a member or the status of a member who meets
20 the minimum membership service requirement of 19-3-2116.

21 (57) "Written application" or "written election" means a written instrument, prescribed by the board
22 or required by law, properly signed and filed with the board, that contains all required information, including
23 documentation that the board considers necessary.

24 (58) "Written instrument" includes an electronic record containing an electronic signature, as defined
25 in 30-18-102."
26

27 **Section 2.** Section 19-3-2116, MCA, is amended to read:

28 **"19-3-2116. Vesting -- mandatory termination of membership -- forfeitures.** (1) A member's

1 contribution account includes the member's contributions and the income on those contributions and is vested
2 from the date that the employee becomes a member of the plan.

3 (2) For members hired on or before December 31, 2022, A the member's employer contribution
4 account includes the employer's contributions and the income on those contributions and is vested only when
5 the member has a total of 5 years of membership service under the system.

6 (3) For members hired on or after January 1, 2023, a member's employer contribution account
7 includes the employer's contributions and the income on those contributions and is vested on a graded
8 schedule as follows:

9 (i) 20% vested after 2 years of employment;

10 (ii) 40% vested after 3 years of employment;

11 (iii) 60% vested after 4 years of employment;

12 (iv) 80% vested after 5 years of employment; and

13 (v) 100% vested after 6 years of employment.

14 ~~(3)(4)~~ A member's account for other contributions includes the member's rollovers of contributions
15 made pursuant to 19-3-2115 and income on those contributions and is vested from the date that the
16 contribution is credited to the account.

17 ~~(4)(5)~~ A member who terminates service after becoming a vested member may terminate plan
18 membership as provided in 19-3-2123.

19 ~~(5)(6)~~ A member who terminates service before becoming a fully vested member shall terminate plan
20 membership as provided in 19-3-2123 and subject to 19-3-2126 be eligible for an amount of their employer
21 contribution in proportion to their progress toward being fully vested.

22 ~~(6)~~ If the member's employer contribution account is not vested upon termination of plan membership,
23 as provided in 19-3-2123, the employer contributions and income are forfeited and must be allocated as
24 provided in 19-3-2117."

25

26 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

27

28 NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the

1 meaning of 1-2-109, to January 1, 2023.

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- END -