

HOUSE BILL NO. 181
INTRODUCED BY MUSGROVE
BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE THAT THE TEACHERS' RETIREMENT SYSTEM PROVIDES BENEFITS FUNDED IN AN ACTUARIALLY SOUND MANNER AS REQUIRED BY THE MONTANA CONSTITUTION; ~~CHANGING BENEFITS FOR SYSTEM MEMBERS HIRED AFTER JULY 1, 2005~~; ALLOWING THE TEACHERS' RETIREMENT BOARD TO SET THE SYSTEM'S REGULAR INTEREST RATE TO LESS THAN 4 PERCENT; INCREASING EMPLOYER CONTRIBUTIONS TO THE SYSTEM, INCLUDING THE UNIVERSITY SYSTEM'S SUPPLEMENTAL EMPLOYER CONTRIBUTION FOR LIABILITIES CREATED WHEN THE OPTIONAL RETIREMENT PROGRAM WAS CREATED; AUTHORIZING THE TEACHERS' RETIREMENT BOARD TO REDUCE THE INCREASED CONTRIBUTION RATES TO THE PRIOR RATES WHEN FUNDING IS SUFFICIENT TO KEEP THE SYSTEM ACTUARIALLY SOUND; PROVIDING AN APPROPRIATION; AMENDING SECTIONS ~~19-20-101~~, 19-20-501, 19-20-605, AND 19-20-621, ~~19-20-715, 19-20-716, 19-20-801, 19-20-802, AND 19-20-805~~, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, unanticipated declines in the market value of the teachers' retirement system's investments during fiscal years 2000, 2001, and 2002 resulted in a significant increase in the unfunded liabilities for the system that extended the system's amortization schedule for unfunded liabilities to more than 30 years; and

WHEREAS, Article VIII, section 15, of the Montana constitution requires public retirement systems to be funded on an actuarially sound basis; and

WHEREAS, a 30-year amortization schedule has been determined by the governmental accounting standards board to be necessary to maintain the actuarial soundness of the retirement system; and

WHEREAS, benefits promised to current members cannot be changed; and

WHEREAS, ~~benefit changes for future members~~ and increased contributions are required to return the amortization schedule for the unfunded liabilities of the teachers' retirement system to 30 years or less.

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

~~Section 1. Section 19-20-101, MCA, is amended to read:~~

~~"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the~~

following definitions apply:

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

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

~~———— (3) "Average final compensation" means:~~

~~———— (a) for a member who became a member before July 1, 2005:~~

~~———— (i) the average of a the member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602; or~~

~~———— (ii) if the member has less than 3 consecutive years of full-time service in the 5 years immediately preceding the member's termination, the member's compensation annualized as provided under 19-20-805;~~

~~———— (b) for a member who became a member on or after July 1, 2005:~~

~~———— (i) the average of the member's earned compensation during the 5 consecutive years of full-time service that yield the highest average and on which contributions have been made as required by 19-20-602; or~~

~~———— (ii) if the member has less than 5 consecutive years of full-time service in the 5 years immediately preceding the member's termination, the member's compensation annualized as provided under 19-20-805.~~

~~———— (c) If amounts defined in subsection (6)(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 the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation:~~

~~———— (d) If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have the amounts reported as earned compensation, any amounts reported in the 3-year period years that constitute average final compensation for the member must be included in the member's average final compensation in the same manner as provided under 19-20-716(1)(b) for including termination pay.~~

~~———— (4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.~~

~~———— (5) "Creditable service" is that service defined by 19-20-401.~~

~~(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation:~~

~~(b) Earned compensation does not mean:~~

~~(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;~~

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

~~(A) professional membership dues;~~

~~(B) maintenance;~~

~~(C) housing;~~

~~(D) day care;~~

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

~~(F) any similar payment for any form of maintenance, allowance, or expenses;~~

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

~~(iv) any noncash benefit provided by an employer to or on behalf of an employee.~~

~~(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.~~

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

~~(e) Earned compensation does not include:~~

~~(i) compensation paid 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);~~

~~(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or~~

~~(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.~~

~~(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.~~

~~(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means~~

service that is full-time and that totals at least 9 months in any year.

~~———— (9) "Internal Revenue Code" has the meaning provided in 15-30-101.~~

~~———— (10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.~~

~~———— (11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:~~

~~———— (a) by virtue of age, length of service, or both;~~

~~———— (b) without disability; and~~

~~———— (c) with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.~~

~~———— (12) "Part-time service" means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.~~

~~———— (13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.~~

~~———— (14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).~~

~~———— (15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.~~

~~———— (16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.~~

~~———— (17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.~~

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

~~———— (19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.~~

~~———— (20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.~~

~~———— (21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716:~~

~~———— (b) Termination pay does not include:~~

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

~~———— (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).~~

~~———— (22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.~~

~~———— (23) "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 1. Section 19-20-501, MCA, is amended to read:

"19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest. ~~The rate established by the board may not be less than 4%.~~

(3) The retirement board shall annually divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-20-605(5), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities

in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."

Section 2. Section 19-20-605, MCA, is amended to read:

"19-20-605. Pension accumulation fund -- employer's contribution. The pension accumulation fund is the fund 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 the pension accumulation fund must be made as follows:

(1) (a) Each Except as provided in subsection (1)(b), each employer shall pay into the pension accumulation fund an amount equal to 7.47% a percentage of the earned compensation of each member for all of the employer's employees who are members of the system that are employed during the whole or part of the preceding payroll period as follows:

(i) 8.67% beginning July 1, 2005; and

(ii) 9.87% beginning July 1, 2007; AND

(iii) 10.62% BEGINNING JULY 1, 2009.

(b) (i) The employer contribution rate under subsection (1)(a) must be reduced to 7.47% on the date that the board certifies to the governor that the percentage is sufficient to allow the amortization schedule for the system's unfunded liabilities to be maintained at 25 years or less.

(ii) The board shall periodically review the employer contribution rate provided in this subsection (1)(b) and recommend adjustments to the legislature as needed to maintain the amortization of unfunded liabilities in an actuarially sound manner.

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

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

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's

contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

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

(6) The retirement board may transfer from the pension accumulation fund to the expense fund an amount necessary to cover expenses of administration."

Section 3. Section 19-20-621, MCA, is amended to read:

"19-20-621. Montana university system optional retirement program supplemental contributions.

(1) Each employer within the university system with employees participating in the optional retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The optional retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program ~~must increase to~~ is:

(a) ~~2.81%~~ 4.60% beginning July 1, ~~1997~~ 2005; and

(b) ~~3.12%~~ 5.16% beginning July 1, ~~1998~~ 2007;

~~———— (c) 3.42% beginning July 1, 1999;~~

~~———— (d) 3.73% beginning July 1, 2000; and~~

~~———— (e) 4.04% beginning July 1, 2001.~~

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033."

~~———— **Section 5.** Section 19-20-715, MCA, is amended to read:~~

~~———— **"19-20-715. Compensation limit.** (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1,~~

1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

~~———— (2) In determining a member's retirement allowance under 19-20-802 or 19-20-804 for a member who became a member before July 1, 2005, the compensation reported in each year of the 3 years that make makes up the member's average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.~~

~~———— (3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716."~~

~~———— **Section 6.** Section 19-20-716, MCA, is amended to read:~~

~~———— **"19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsection (4), by signing a binding, irrevocable written election at least 90 days before the member's termination date, one of the following options:~~

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

~~———— (b) Option 2--The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' year of salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). The contributions must be made at the time of termination.~~

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

~~———— (2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:~~

~~———— (a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions~~

are paid from the same source as compensation is paid;

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

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

———(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination.

The pickup does not apply to a contribution made before the effective date of the pickup.

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

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

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

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

———(b) picked up by the employer.

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

———**Section 7.** Section 19-20-801, MCA, is amended to read:

———"**19-20-801. Eligibility for service retirement.** (1) A member who has at least 5 full years of creditable service and who may retire from service under this section if the member has:

———(a) attained the age of 60; or has

———(b) been credited with full-time or part-time creditable service in:

———(i) 25 or more years may retire from service if the member has for a member who became a member before July 1, 2005; or

———(ii) 30 or more years for a member who became a member after July 1, 2005.

———(2) To be eligible to retire under this section, the member must have terminated employment in all positions from which the member is eligible to retire and files with submitted a complete written application to the retirement board a written application."

~~Section 8.~~ Section 19-20-802, MCA, is amended to read:

~~"19-20-802. Early retirement. (1) A member who is not eligible for service retirement under 19-20-801 but who has at least 5 years of creditable service and who is eligible for an early retirement under this section if the member:~~

~~(a) has attained the age of 50 may retire from service and be eligible for an early retirement allowance if for a member who became a member before July 1, 2005; or~~

~~(b) has attained the age of 55 for a member who became a member after July 1, 2005.~~

~~(2) To be eligible for early retirement under this section, the member files with must have submitted a complete written application to the retirement board the member's written application.~~

~~(2)(3) The early retirement allowance must be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:~~

~~(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service under 19-20-801 calculated based on either age or service, whichever results in the lowest reduction; and~~

~~(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) (3)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service under 19-20-801 calculated based on either age or service, whichever results in the lowest reduction."~~

~~Section 9.~~ Section 19-20-805, MCA, is amended to read:

~~"19-20-805. Earned compensation -- part-time service. (1) The earned compensation of If a member who retired under 19-20-802 or 19-20-804 and had has less than 3 the consecutive years of full-time service during the 5 years immediately preceding the member's termination that are required to calculate the member's average final compensation, then the member's earned compensation is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.~~

~~(2) (a) Subject to subsection (2)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 the consecutive years of full-time service reported to the teachers' retirement system required to calculate the member's average final compensation, then~~

the member's average final compensation may 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, divided by the member's part-time teachers' 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."~~

NEW SECTION. Section 4. Appropriation. The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in [this act]:

Fiscal Year 2006		Fiscal Year 2007	
General Funds	Other Funds	General Funds	Other Funds
Office of Public Instruction (School Base Aid)			
\$1,738,000	\$0	\$1,772,000	\$0
<u>\$1,650,000</u>		<u>\$1,714,000</u>	
Other Executive Branch			
\$38,000	\$26,000	\$38,000	\$26,000
	<u>\$18,000</u>		<u>\$18,000</u>
University System			
\$524,000	\$691,000	\$522,000	\$691,000
<u>\$397,000</u>	<u>\$843,000</u>	<u>\$395,000</u>	<u>\$903,000</u>

NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2005.

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