

1 HOUSE BILL NO. 88

2 INTRODUCED BY M. BERTOGLIO

3 BY REQUEST OF THE TEACHERS' RETIREMENT BOARD
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS OF
6 THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE DEFINITION OF EARNED COMPENSATION;
7 CLARIFYING EMPLOYER REPORTING REQUIREMENTS; REVISING MANDATORY DISTRIBUTION
8 PROVISIONS TO CONFORM WITH FEDERAL LAW; CORRECTING THE REFERENCED TIME PERIOD
9 FOR REPORTING COMPENSATION EARNED BY A DISABLED MEMBER; AMENDING SECTIONS 19-20-
10 101, 19-20-208, 19-20-303, 19-20-703, AND 19-20-905, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13

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

15 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the
16 following definitions apply:

17 (1) "Accumulated contributions" or "account balance" means the sum of all the amounts deducted
18 from the compensation of a member or paid by a member and credited to the member's individual account in
19 the annuity savings account, together with interest, minus any amount deducted for correction of errors and the
20 aggregate amount of all retirement benefit payments and refunds of accumulated contributions paid to or on
21 behalf of the member.

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

24 (3) "Alternate beneficiary" means an estate or an individual not designated as a beneficiary but that
25 becomes a beneficiary pursuant to 19-20-1005.

26 (4) "Average final compensation" means a member's highest average earned compensation,
27 determined pursuant to 19-20-805, on which all required contributions have been made.

28 (5) "Beneficiary designation" means the process that the retirement system prescribes pursuant to

1 this chapter by which a person authorized by law designates one or more beneficiaries.

2 (6) "Beneficiary designation record" means either the hard copy form or electronic record prescribed
3 by the retirement system and used by a person authorized by law to designate one or more beneficiaries.

4 (7) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a
5 retirement allowance.

6 (8) "Contingent beneficiary" means a designated beneficiary with the right to receive any benefit or
7 refund of accumulated contributions payable if there is no eligible primary beneficiary.

8 (9) "Creditable service" is that service defined by 19-20-401.

9 (10) "Date of termination" or "termination date" means the last date on which a member performed
10 service in a position reportable to the retirement system.

11 (11) "Designated beneficiary" means one or more primary beneficiaries or contingent beneficiaries
12 designated pursuant to 19-20-1006.

13 (12) (a) "Earned compensation" means, except as limited by subsections (12)(b) and (12)(c) or by 19-
14 20-715, remuneration paid for the service of a member out of funds controlled by an employer before any
15 pretax deductions allowed under the Internal Revenue Code are deducted.

16 (b) Earned compensation does not include:

17 (i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability,
18 life, vision, dental, or any other insurance;

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

20 (A) professional membership dues;

21 (B) maintenance;

22 (C) housing;

23 (D) day care;

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

25 (F) any similar form of maintenance, allowance, or expenses;

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

27 (iv) any noncash benefit provided by an employer to or on behalf of a member;

28 (v) termination pay unless included pursuant to 19-20-716;

1 (vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f)
2 of the Internal Revenue Code, 26 U.S.C. 457(f);

3 (vii) payment for sick, annual, or other types of leave paid to a member prior to termination from
4 employment or accrued in excess of that normally allowed;

5 (viii) incentive or bonus payments paid to a member that are not part of a series of annual payments;

6 (ix) a professional stipend paid pursuant to 20-4-134; or

7 (x) any similar payment or reimbursement made to or on behalf of a member by an employer; ;

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

10 (ii) Cash paid in lieu of any direct employer-paid or noncash benefit that has previously been or would
11 be paid or provided to or on behalf of the employee at the employee's request or direction is considered a fringe
12 benefit and not earned compensation.

13 (13) "Employer" means:

14 (a) the state of Montana;

15 (b) a public school district, as provided in 20-6-101 and 20-6-701;

16 (c) the office of public instruction;

17 (d) the board of public education;

18 (e) an education cooperative;

19 (f) the Montana school for the deaf and blind, as described in 20-8-101;

20 (g) the Montana youth challenge program, as defined in 10-1-101;

21 (h) a state youth correctional facility, as defined in 41-5-103;

22 (i) the Montana university system;

23 (j) a community college; or

24 (k) any other agency, political subdivision, or instrumentality of the state that employs a person who is
25 designated a member of the retirement system pursuant to 19-20-302.

26 (14) "Extra duty service" means service in an educational services capacity that is not compensated as
27 part of the normally assigned duties and functions of a school district teacher, administrator, or other employee
28 but is regularly assigned to one or more school district teachers, administrators, or other employees as part of

1 the regular operation of the school district's curricular and extracurricular programs.

2 (15) "Full-time service" means service that is:

3 (a) at least 180 days in a fiscal year;

4 (b) at least 140 hours a month during at least 9 months in a fiscal year; or

5 (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school

6 board and reported to the office of public instruction as required by 20-1-302. The standard for full-time service

7 for a school district operating under an alternative school calendar must be applied uniformly to all employees

8 of the school district required to be reported to the retirement system.

9 (16) "Individual" means a human being.

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

11 (18) "Joint annuitant" means the one person that a retired member who has elected an optional

12 allowance under 19-20-702(2), (4), or (5) has designated to receive a retirement allowance upon the death of

13 the retired member.

14 (19) "Member" means a person who has an individual account in the annuity savings account. Unless

15 otherwise specified, "member" refers to a tier one member or a tier two member.

16 (20) "Normal form" or "normal form benefit" means a monthly retirement benefit payable only for the

17 lifetime of the retired member.

18 (21) "Normal retirement age" means an age no earlier than 60 years of age.

19 (22) "Part-time service" means service that is not full-time service. Part-time service must be credited

20 in the proportion that the actual time worked compares to full-time service.

21 (23) "Position reportable to the retirement system" means a position in which an individual performs

22 duties that would entitle the person to active membership in the retirement system under the provisions of 19-

23 20-302.

24 (24) "Primary beneficiary" means a designated beneficiary with a first right to receive any benefit or

25 refund of accumulated contributions payable upon the death of the individual authorized by law to make the

26 designation.

27 (25) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-

28 501(2).

1 (26) "Retired", "retired member", or "retiree" means a person who is considered in retired member
2 status under the provisions of 19-20-810.

3 (27) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member
4 who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

5 (28) "Retirement board" or "board" means the retirement system's governing board provided for in 2-
6 15-1010.

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

9 (30) "Service" means the performance of duties that would entitle the person to active membership in
10 the retirement system under the provisions of 19-20-302.

11 (31) "Termination" or "terminate" means that the employment relationship between the member and
12 the member's employer has been terminated as required in 19-20-810.

13 (32) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay,
14 amounts provided under a window or early retirement incentive plan, or other payments contingent on the
15 employee terminating employment.

16 (b) Termination pay does not include:

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

19 (ii) amounts that are payable to a member from a plan for the deferral of compensation under section
20 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

21 (33) "Tier one member" means a person who became a member before July 1, 2013, and who has not
22 withdrawn the member's account balance.

23 (34) "Tier two member" means a person who became a member on or after July 1, 2013, or who, after
24 withdrawing the member's account balance, became a member again after July 1, 2013.

25 (35) "Vested" means that a member has been credited with at least 5 full years of membership service
26 upon which contributions have been made and has a right to a future retirement benefit.

27 (36) "Written application" or "written election" means a written instrument, required by statute or the
28 rules of the board, properly signed and filed with the board, that contains all the required information, including

1 documentation that the board considers necessary."
 2

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

4 **"19-20-208. Duties and liability of employer.** (1) Each employer shall:

5 (a) (i) each month, report the name, social security number, time worked, and gross earnings of each
 6 employed member; and

7 (ii) pick up the contributions of each employed member at the rate prescribed pursuant to 19-20-602
 8 and 19-20-608; and transmit the contributions each month to the executive director of the retirement board;

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

11 (c) keep records and, as required by the retirement board, furnish information to the board that is
 12 required in the discharge of the board's duties;

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

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

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

20 (g) at the request of the retirement board, certify the names of all persons who are eligible for
 21 membership or who are members of the retirement system;

22 ~~(h) notify the retirement board of the employment of a person eligible for membership and forward the~~
 23 ~~person's membership application to the board; and~~

24 ~~(i) if the employer has converted to earned compensation amounts excluded from earned~~
 25 ~~compensation, for each retiring member, certify to the board the amounts reported to the system in each of the~~
 26 ~~5 years preceding the member's retirement.~~

27 (2) An employer that fails to timely or accurately report the employment of, time worked by, or
 28 compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with

1 the retired member for repayment to the retirement system of retirement benefits paid to which the member was
2 not entitled, plus interest.

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

6

7 **Section 3.** Section 19-20-303, MCA, is amended to read:

8 **"19-20-303. Inactive membership -- dormant membership status.** (1) A nonvested or vested
9 member's active membership in the retirement system terminates and the member becomes an inactive
10 member when the member ceases to be employed in a position reportable to the retirement system.

11 (2) A vested member becomes an inactive member of the teachers' retirement system if the member
12 becomes an active member of another retirement or pension system supported wholly or in part by the money
13 of another government agency, except the federal social security retirement system, and the membership in the
14 other retirement system would allow credit for the same employment service in both retirement systems.
15 However, the member may not be excluded from active membership in the teachers' retirement system solely
16 because the person is receiving or is eligible to receive retirement benefits from another retirement system.

17 (3) A vested inactive member must be transferred to dormant membership status if the member fails
18 to take one of the following actions by April 1 following the calendar year in which the member attains the age
19 of 70 1/2 if the member was born before July 1, 1949, or the age of 72 if the member was born on or after July
20 1, 1949:

21 (a) elect to terminate membership by withdrawing from the retirement system and taking a refund of
22 the member's accumulated contributions under 19-20-603;

23 (b) apply to receive retirement benefits under part 8 or part 9 of this chapter; or

24 (c) return to active membership.

25 (4) A nonvested inactive member must be transferred to dormant membership status if the member
26 fails to take one of the following actions within 7 years after becoming an inactive member:

27 (a) elect to terminate membership by withdrawing from the retirement system and taking a refund of
28 the member's accumulated contributions under 19-20-603; or

1 (b) return to active membership.

2 (5) With respect to a member in dormant membership status:

3 (a) the retirement system shall no longer attempt to locate or contact the member or send
4 communications or annual statements to the member; and

5 (b) the retirement system shall transfer the amount in the member's annuity savings account to the
6 pension accumulation account and the amount may not be credited with additional interest while the member is
7 in a dormant membership status.

8 (6) If a vested inactive member in dormant membership status takes an action described in
9 subsection (3), the member is no longer in dormant membership status and the retirement system shall restore
10 the member's account balance to the member's annuity savings account and credit the account balance with
11 the interest that would have been earned if the amount had remained in the annuity savings account.

12 (7) If a nonvested inactive member takes an action described in subsection (4), the member is no
13 longer in dormant membership status and the retirement system shall restore the member's account balance to
14 the member's annuity savings account and credit the account balance with the interest that would have been
15 earned if the amount had remained in the annuity savings account.

16 (8) Nothing in this section affects the rights, benefits, obligations, or liabilities provided for under this
17 chapter if a member dies in a dormant membership status."
18

19 **Section 4.** Section 19-20-703, MCA, is amended to read:

20 **"19-20-703. Payments to be monthly.** (1) All retirement allowances must be paid in equal monthly
21 installments.

22 (2) Except as provided in subsection (5), the retirement allowance may commence:

23 (a) no earlier than the first day of the month following the member's termination date or on the first
24 day of the month following the date when the member first becomes eligible, whichever date is later; or

25 (b) if requested by the inactive member in writing:

26 (i) on the first day of a later month; or

27 (ii) on the first day of the month following the member's 60th birthday.

28 (3) Distribution of an inactive member's benefit must begin by the later of the April 1 following the

1 calendar year in which a member attains the age of 70 1/2 if the member was born before July 1, 1949, or the
 2 age of 72 if the member was born on or after July 1, 1949, or April 1 of the year following the calendar year in
 3 which the member terminates. If a member fails to apply for retirement benefits by the later of either of those
 4 dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(3)(a)(i).

5 (4) The life expectancy of a member or the member's joint annuitant may not be recalculated after
 6 benefits commence.

7 (5) If a member terminates within 30 days of the last day of the school year, the member is
 8 considered to have terminated at the end of the member's contract, and the retirement allowance may not
 9 commence earlier than the first day of the month following the last scheduled pupil-instruction day or pupil-
 10 instruction-related day as described in 20-1-304, whichever is later."
 11

12 **Section 5.** Section 19-20-905, MCA, is amended to read:

13 **"19-20-905. Cancellation of allowance and restoration of membership.** (1) If a disabled retiree is
 14 employed in a position reportable to the retirement system and earns compensation in any ~~fiscal~~ calendar year
 15 in excess of the limitation provided in 19-20-904, the retiree's retirement allowance must cease and the retiree
 16 must again become an active member of the retirement system effective on the first day of the month following
 17 the month in which the earnings limitation was exceeded.

18 (2) If the member is restored to active membership on or after the attainment of the age of 55 years,
 19 the member's retirement allowance upon subsequent retirement may not exceed the retirement allowance that
 20 the member would have received had the member remained in service during the period of the member's
 21 previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to
 22 the member's last restoration to service and the retirement allowance that the member would have received on
 23 account of the member's service since the member's last restoration had the member entered service at that
 24 time as a new member."
 25

26 **NEW SECTION. Section 6. Effective date.** [This act] is effective July 1, 2021.

27 - END -