

1 SENATE BILL NO. 261

2 INTRODUCED BY S. MALEK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A LEGISLATOR TO MAKE AN ELECTION EACH TERM
5 CONCERNING LEGISLATIVE PARTICIPATION IN A PUBLIC EMPLOYEE RETIREMENT SYSTEM;
6 SPECIFYING THAT A LEGISLATOR WHO ELECTS NOT TO PARTICIPATE IN A PUBLIC EMPLOYEE
7 RETIREMENT SYSTEM AS A LEGISLATOR MAY NOT BE CONSIDERED AS EMPLOYED IN A POSITION
8 COVERED BY THE RETIREMENT SYSTEM BASED ON THE LEGISLATOR'S EMPLOYMENT AS A
9 LEGISLATOR; AND AMENDING SECTIONS 5-2-304 AND 19-3-412, MCA."

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

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13 **Section 1.** Section 5-2-304, MCA, is amended to read:

14 **"5-2-304. Participation in public retirement systems.** (1) The purpose of this section is to allow a
15 person who is elected or appointed to the Montana legislature and who is also a member of a retirement system
16 provided for in Title 19, chapter 3, 5, 6, 7, 8, 9, 13, 20, or 21, by virtue of the person's nonlegislative employment
17 to continue the person's participation in the public retirement system of which the person is a member.

18 (2) This section is not intended to provide duplicate credit for the same service in two retirement systems
19 supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments
20 specifically provided for in the laws governing the operation of individual retirement systems.

21 (3) (a) A person who is an inactive or retired member of a retirement system provided for in Title 19,
22 chapter 5, 6, 7, 8, 9, 13, 20, or 21, and who is elected or appointed to be a legislator may:

23 (i) return to active membership in the system of which the person is an inactive or retired member under
24 the requirements of that system; or

25 (ii) remain an inactive or retired member of the retirement system and become an active member of the
26 public employees' retirement system pursuant to 19-3-412.

27 (b) A person who is an inactive or retired member of the public employees' retirement system provided
28 for in Title 19, chapter 3, and who is elected or appointed to the legislature may return to active membership in
29 the public employees' retirement system but cannot simultaneously be an inactive or retired member of the
30 system as a result of prior covered terminated employment and an active member of the retirement system under

1 19-3-412 or this section.

2 (4) (a) A person who is an active member of a public retirement system governed by state law and who
3 is elected or appointed to be a legislator may, but is not required to, continue the person's participation in that
4 public retirement system while engaged in official duties as a legislator.

5 (b) To continue participation as an active member in the public retirement system, a legislator shall,
6 within 90 days ~~of~~ after taking office and in a manner prescribed by the appropriate board, file an irrevocable
7 written election with the teachers' retirement board or the public employees' retirement board. The election is valid
8 for that term of office only. If the legislator is reelected, a new election must be made for the new term.

9 (5) (a) A legislator who elects to continue participation as an active member as provided in subsection
10 (4) shall continue the payments into the fund of the retirement system at the rate currently in effect in the system
11 based on the legislator's monthly salary as a member of that system.

12 (b) A legislator who elects to decline participation as a legislator may not be considered as employed
13 in a position covered by the retirement system based on the legislator's legislative employment.

14 (6) The state contribution must be made by legislative appropriation. It must equal the appropriate
15 employer contribution at the rate currently in effect in the system."
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17 **Section 2.** Section 19-3-412, MCA, is amended to read:

18 **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and subsection (2) of this section,
19 the following employees and elected officials in covered positions shall elect either to become active members
20 of the retirement system or to decline this optional membership by filing an irrevocable, written application with
21 the board in the manner prescribed in subsection (3):

22 (a) elected officials of the state or local governments, including individuals appointed to fill the unexpired
23 term of elected officials, who:

24 (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

25 (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the
26 defined contribution plan at the time of their election;

27 (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered
28 employment with all employers under this chapter in any fiscal year;

29 (c) employees directly appointed by the governor;

30 (d) employees working 10 months or less for the legislative branch to perform work related to the

1 legislative session;

2 (e) the chief administrative officer of any city or county;

3 (f) employees of county hospitals or rest homes.

4 (2) A member who is elected to a local government position in which the member works less than 960
5 hours in a calendar year may, within 90 days of taking office, decline optional membership with respect to the
6 member's elected position.

7 (3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1)
8 and provide written application forms to each employer.

9 (b) Each employee or elected official in a position covered under subsection (1) shall obtain the written
10 application form from the employer and complete and return it to the board.

11 (c) The written application must be filed with the board:

12 (i) for an employee described in subsection (1)(d), within 90 days of the commencement of the
13 employee's employment; and

14 (ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within
15 90 days of the commencement of the employee's or elected official's employment.

16 (d) The employer shall retain a copy of the employee's or elected official's written application.

17 (4) If the employee or elected official fails to file the written application required under subsection (1) with
18 the board within the time allowed in subsection (3), the employee or elected official waives membership.

19 (5) An employee or elected official who declines optional membership may not receive membership
20 service or service credit for the employment for which membership was declined.

21 (6) An employee or elected official who declined optional membership but later becomes a member may
22 purchase service credit for the period of time beginning with the date of employment in which membership was
23 declined to the commencement of membership. Purchase of service credit pursuant to this subsection must
24 comply with 19-3-505.

25 (7) Except as provided in 5-2-304 and subsection (2) of this section, membership in the retirement
26 system is not optional for an employee or elected official who is already a member. Upon employment in a
27 position for which membership is optional:

28 (a) a member who was an active member before the employment remains an active member;

29 (b) a member who was an inactive member before the employment becomes an active member; and

30 (c) a member who was a retired member before the employment is subject to part 11 of this chapter.

