

SENATE BILL NO. 56

INTRODUCED BY L. JENT

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING BENEFIT PROVISIONS FOR NEW HIRES IN THE TEACHERS' RETIREMENT SYSTEM; INCREASING FOR NEW HIRES THE REQUIRED YEARS TO CALCULATE AVERAGE FINAL COMPENSATION, THE VESTING REQUIREMENTS, THE EMPLOYEE CONTRIBUTION RATE, AND THE SERVICE AND EARLY RETIREMENT AGES; INCREASING THE SERVICE RETIREMENT ALLOWANCE FOR A MEMBER WITH 30 OR MORE YEARS OF SERVICE; REVISING THE EARLY RETIREMENT ALLOWANCE; EXTENDING EXISTING BOARD RULEMAKING AUTHORITY; REQUIRING THE TEACHERS' RETIREMENT BOARD TO APPLY FOR A RULING FROM THE INTERNAL REVENUE SERVICE AND MAKING THE ACT CONTINGENT ON A FAVORABLE RULING; AMENDING SECTIONS 19-20-101, 19-20-602, 19-20-715, 19-20-716, 19-20-801, 19-20-802, 19-20-804, AND 19-20-805, MCA; AND PROVIDING EFFECTIVE DATES."

WHEREAS, the 61st Legislature enacted House Bill No. 659, which directed the 2009-2010 State Administration and Veterans' Affairs Interim Committee (the SAVA Committee) to examine and recommend changes to Montana's statewide public retirement systems; and

WHEREAS, the SAVA Committee spent nearly 16 months studying the current funding and design of the retirement systems, as well as options for their redesign; and

WHEREAS, at the conclusion of its study, the SAVA Committee voted to forward to the 62nd Legislature two alternative designs for the Teachers' Retirement System (TRS); and

WHEREAS, one of the alternative designs revises the existing TRS to offer an increased multiplier for new hires working 30 years, while amending other provisions related to the vesting period and the amount of time used to calculate a member's average final compensation.

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

1 following definitions apply:

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

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

8 (3) (a) "Average final compensation" means:

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

12 (ii) for a tier two member, the average of a member's earned compensation during the 5 consecutive  
13 years of full-time service or as provided under 19-20-805 that yield the highest average and on which  
14 contributions have been made as required by 19-20-602.

15 (b) If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation  
16 for all members and have been continuously reported as earned compensation in a like amount for at least the  
17 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final  
18 compensation.

19 (c) If amounts defined in subsection (6)(b) have been reported as earned compensation for less than  
20 5 fiscal years or if the member has been given the option to have the amounts reported as earned compensation,  
21 any amounts reported in the ~~3-year period that constitute~~ years used to calculate average final compensation for  
22 the member must be included in average final compensation in the same manner as provided under  
23 19-20-716(1)(b) for including termination pay.

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

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

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

- 1 (b) Earned compensation does not mean:
- 2 (i) direct employer premium payments on behalf of members for health or dependent care expense
- 3 accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any
- 4 other insurance;
- 5 (ii) any direct employer payment or reimbursement for:
- 6 (A) professional membership dues;
- 7 (B) maintenance;
- 8 (C) housing;
- 9 (D) day care;
- 10 (E) automobile, travel, lodging, or entertaining expenses; or
- 11 (F) any similar payment for any form of maintenance, allowance, or expenses;
- 12 (iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or
- 13 (iv) any noncash benefit provided by an employer to or on behalf of an employee.
- 14 (c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.
- 15 (d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same
- 16 or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.
- 17 (e) Earned compensation does not include:
- 18 (i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of
- 19 the Internal Revenue Code, 26 U.S.C. 457(f);
- 20 (ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in
- 21 excess of that normally allowed; or
- 22 (iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.
- 23 (7) "Employer" means:
- 24 (a) the state of Montana;
- 25 (b) a public school district, as provided in 20-6-101 and 20-6-701;
- 26 (c) the office of public instruction;
- 27 (d) the board of public education;
- 28 (e) an education cooperative;
- 29 (f) the Montana school for the deaf and blind, as described in 20-8-101;
- 30 (g) the Montana youth challenge program, as defined in 10-1-101;

- 1 (h) a state youth correctional facility, as defined in 41-5-103;
- 2 (i) the Montana university system;
- 3 (j) a community college; or
- 4 (k) any other agency or subdivision of the state that employs a person who is designated a member of
- 5 the retirement system pursuant to 19-20-302.
- 6 (8) "Full-time service" means service that is:
- 7 (a) at least 180 days in a fiscal year;
- 8 (b) at least 140 hours a month during 9 months in a fiscal year; or
- 9 (c) full-time under an alternative school calendar adopted by a school board that is less than 180 days
- 10 but meets minimum accreditation requirements of 1,080 hours.
- 11 (9) "Internal Revenue Code" has the meaning provided in 15-30-2101.
- 12 (10) "Member" means a person who has an individual account in the annuity savings account. An active
- 13 member is a person included under the provisions of 19-20-302. An inactive member is a person included under
- 14 the provisions of 19-20-303.
- 15 (11) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the
- 16 lifetime of the retired member.
- 17 (12) "Normal retirement age" means an age no earlier than 55 years of age, with the right to receive
- 18 immediate retirement benefits without an actuarial reduction in the benefits.
- 19 (13) "Part-time service" means service that is less than 180 days in a fiscal year or less than 140 hours
- 20 a month during 9 months in a fiscal year. Part-time service must be credited in the proportion that the actual time
- 21 worked compares to full-time service.
- 22 (14) "Regular interest" means interest at a rate set by the retirement board in accordance with
- 23 19-20-501(2).
- 24 (15) "Retired member" means a person who has terminated employment that qualified the person for
- 25 membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this
- 26 chapter.
- 27 (16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or
- 28 disability retirement or due to a beneficiary as provided in 19-20-1001.
- 29 (17) "Retirement board" or "board" means the retirement system's governing board provided for in
- 30 2-15-1010.

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

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

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

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

12 (b) Termination pay does not include:

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

15 (ii) amounts that are payable to a member from a plan for the deferral of compensation under section  
16 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

17 (22) "Tier one member" means a member hired before July 1, 2011.

18 (23) "Tier two member" means a member hired on or after July 1, 2011.

19 ~~(22)~~(24) "Vested" means that:

20 (a) a tier one member has been credited with at least 5 full years of membership service upon which  
21 contributions have been made, as required by 19-20-602, 19-20-605, and 19-20-607, and who has a right to a  
22 future retirement benefit; or

23 (b) a tier two member has been credited with at least 5 full years of membership service upon which  
24 contributions have been made, as required by 19-20-602, 19-20-605, and 19-20-607, and has a right to a future  
25 retirement benefit according to the vesting schedule provided in [section 5].

26 ~~(23)~~(25) "Written application" or "written election" means a written instrument, required by statute or the  
27 rules of the board, properly signed and filed with the board, that contains all the required information, including  
28 documentation that the board considers necessary."

29

30 **Section 2.** Section 19-20-602, MCA, is amended to read:

1           **"19-20-602. Annuity savings account -- member's contribution.** (1) The annuity savings account is  
 2 an account in which the contributions for the members to provide for their retirement allowance or benefits must  
 3 be accumulated in individual accounts for each member.

4           (2) The normal contribution of each tier one member is 7.15% of the member's earned compensation.

5           (3) The normal contribution of each tier two member is 7.69% of the member's earned compensation.

6           ~~(2)~~(4) Contributions to and payments from the annuity savings account must be made in the following  
 7 manner:

8           (a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

9           (i) shall pick up and pay the contributions that would be payable by the member under this subsection  
 10 ~~(2)~~ (4) for service rendered after June 30, 1985;

11           (ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

12           (iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

13           (b) The member's contributions picked up by the employer must be designated for all purposes of the  
 14 retirement system as the member's contributions, except for the determination of a tax upon a distribution from  
 15 the retirement system. These contributions must become part of the member's accumulated contributions but  
 16 must be accounted for separately from those previously accumulated.

17           (c) The member's contributions picked up by the employer must be payable from the same source as  
 18 is used to pay compensation to the member and must be included in the member's earned compensation as  
 19 defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the  
 20 amount of the member's contributions picked up by the employer and remit the total of the contributions to the  
 21 retirement board.

22           (d) The deductions must be made notwithstanding that the minimum compensation provided by law for  
 23 a member may be reduced by the deductions. Each member is considered to consent to the deductions  
 24 prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge  
 25 of all claims for the services rendered by the member during the period covered by the payment, except as to the  
 26 benefits provided by the retirement system.

27           ~~(3)~~(5) The accumulated contributions of a member withdrawn by the member or paid to the member's  
 28 estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity  
 29 savings account. Upon the retirement of a member, the member's accumulated contributions must be transferred  
 30 from the annuity savings account to the pension accumulation account."

1

2           **Section 3.** Section 19-20-715, MCA, is amended to read:

3           **"19-20-715. Compensation limit.** (1) Compensation in excess of the limitations set forth in section  
4 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for  
5 individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less  
6 than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of  
7 this section, an eligible employee is an individual who was a member in the retirement system prior to July 1,  
8 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied  
9 prospectively.

10           (2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation  
11 reported in each ~~year of the 3 years that make up~~ of the years of compensation used in the calculation of the  
12 member's average final compensation may not be greater than 110% of the previous year's compensation  
13 included in the calculation of average final compensation or the earned compensation reported to the retirement  
14 system, whichever is less, except as provided by rule by the retirement board.

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

17

18           **Section 4.** Section 19-20-716, MCA, is amended to read:

19           **"19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of  
20 retirement, the member shall select, subject to subsections (5) and (6), by signing a binding, irrevocable written  
21 election at least 90 days before the member's termination date, one of the following options:

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

26           (b) Option 2--The member may use a yearly amount of the total termination pay added to each of the  
27 ~~3 consecutive years' salary~~ years of compensation used in the calculation of the member's average final  
28 compensation. To determine the amount of termination pay used in the calculation of average final compensation,  
29 termination pay must be divided by the total number of years of creditable service to determine a yearly amount.  
30 The member and the employer shall pay contributions on the termination pay according to the rates provided for

1 in 19-20-602 and 19-20-605(1). For the purposes of this subsection (1)(b), the employer shall also pay as a  
2 contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that would  
3 have been payable by the state as a supplemental contribution. The contributions must be made at the time of  
4 termination.

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

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

10 (a) the contributions being picked up, although designated as member contributions, are being paid by  
11 the employer directly to the system in lieu of contributions by the member and that the picked up contributions  
12 are paid from the same source as compensation is paid;

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

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

16 (d) the effective date of the pickup is the date that the irrevocable written election is signed by both the  
17 member and employer. The effective date must be at least 90 days prior to the date of the member's termination.  
18 The pickup does not apply to a contribution made before the effective date of the pickup.

19 (3) For the purpose of this section, the date of termination is the last day the member is performing any  
20 services covered under this chapter.

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

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

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

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

26 (b) picked up by the employer, except as provided in subsections (5) and (6).

27 (5) A member's contributions greater than the total amount of the member's termination pay may not be  
28 picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

29 (6) If a member and the member's employer fail to sign the written election within the time period required  
30 in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all



1 or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked  
2 up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

3  
4 **NEW SECTION. Section 5. Benefit vesting schedule.** A member hired on or after July 1, 2011, is  
5 subject to the following schedule to vest in the service retirement benefit under 19-20-801:

- 6 (1) after 5 years of service, the member is 25% vested;  
7 (2) for 6 through 10 years of service, the member is vested an additional 5% after each full year; and  
8 (3) for 11 through 15 years of service, the member is vested an additional 10% after each full year.

9  
10 **Section 6.** Section 19-20-801, MCA, is amended to read:

11 **"19-20-801. Eligibility for service retirement.** A Subject to subsection (3), a tier one member who has  
12 at least 5 full years of creditable service and who has attained the age of 60 or has been credited with full-time  
13 or part-time creditable service in 25 or more years may retire from service under this section.

14 (2) Subject to subsection (3), a tier two member who has at least 15 full years of creditable service and  
15 who has attained the age of 60 or has been credited with full-time or part-time creditable service in 30 or more  
16 years may retire from service under this section.

17 (3) To be eligible to retire under this section, a member must have ~~if the member has~~ terminated  
18 employment in all positions from which the member is eligible to retire and ~~files~~ filed with the retirement board a  
19 written application."

20  
21 **Section 7.** Section 19-20-802, MCA, is amended to read:

22 **"19-20-802. Early retirement.** (1) (a) A tier one member who is not eligible for service retirement but  
23 who has at least 5 years of creditable service and who has attained the age of 50 may retire from service and  
24 be eligible for an early retirement allowance as provided in subsections (1)(b) if the member files a written  
25 application with the retirement board ~~the member's written application.~~

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

28 ~~(a)(i)~~ (i) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the  
29 retirement date precedes the date on which the member would have retired had the member attained 60 years  
30 of age or had the member completed 25 years of creditable service; and

1           ~~(b)(ii)~~ by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection ~~(2)(a)~~  
 2   (1)(b)(i) but not to exceed 60 additional months that the retirement date precedes the date on which the member  
 3 would have retired had the member attained 60 years of age or had the member completed 25 years of creditable  
 4 service.

5           (2) (a) A tier two member who is not eligible for service retirement but who has at least 5 years of  
 6 creditable service and who has attained the age of 55 may retire from service as provided in subsection (2)(b)  
 7 if the member files a written application with the retirement board.

8           (b) The early retirement allowance must be determined as provided in 19-20-804, except that the  
 9 allowance must be reduced using actuarial factors as determined by the retirement board based on a member's  
 10 age and years of service."

11

12           **Section 8.** Section 19-20-804, MCA, is amended to read:

13           **"19-20-804. Allowance for service retirement.** ~~Upon (1) Except as provided in subsection (2), upon~~  
 14 termination, a member who qualifies for benefits pursuant to 19-20-801 must receive a retirement allowance  
 15 equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum  
 16 of the number of years of creditable service and service transferred under 19-20-409.

17           (2) A tier two member with at least 30 years of creditable service must receive a retirement allowance  
 18 equal to 2% of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the  
 19 number of years of creditable service.

20           (3) For the purposes of subsection (2), creditable service does not include any previous membership  
 21 service that was withdrawn before the member became a tier two member and redeposited with the retirement  
 22 system in the member's capacity as a tier two member pursuant to 19-20-427."

23

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

25           **"19-20-805. Earned compensation -- part-time service.** ~~(1) The earned compensation of~~ If a member  
 26 who retired under 19-20-802 or 19-20-804 and had has less than 3 the consecutive years of full-time service  
 27 during the 5 years immediately preceding the member's termination that are required to calculate the member's  
 28 average final compensation, then the member's earned compensation is the compensation that the member  
 29 would have earned in the 3 years used to calculate average final compensation had the member's part-time  
 30 service been full-time service. To determine the compensation that the member would have earned, the

1 compensation reported must be divided by the part-time service credited to the member's account.

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

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

11 (ii) if the member's part-time service credit in the public employees' retirement system plus the member's  
12 part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used  
13 to determine average final compensation, then the member's part-time salary as a member of the public  
14 employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system  
15 must be divided by the sum of the member's part-time teachers' retirement system service credit and the  
16 member's part-time public employees' retirement system service credit.

17 (b) Compensation reported to the public employees' retirement system used to calculate average final  
18 compensation must be adjusted to exclude any compensation that would be considered termination pay under  
19 this chapter."  
20

21 NEW SECTION. Section 10. Codification instruction. [Section 5] is intended to be codified as an  
22 integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 5].  
23

24 NEW SECTION. Section 11. Board to seek ruling or opinion. The teachers' retirement board shall,  
25 as soon as practicable, request in writing a ruling or determination from the commissioner of the internal revenue  
26 service as to whether the tiers established pursuant to [this act] affect the status of the retirement system as a  
27 "qualified plan" pursuant to section 401(a) of the Internal Revenue Code. [This act] becomes effective on  
28 certification as provided in [section 12].  
29

30 NEW SECTION. Section 12. Certification that tiers are effective. The teachers' retirement board shall

1 certify to the governor and the secretary of state the date on which the tiers established pursuant to [this act] have  
2 received a favorable rule or determination from the internal revenue service. The board shall provide a copy of  
3 the certification to the code commissioner.

4  
5 **NEW SECTION. Section 13. Effective dates -- contingency.** (1) Except as provided in subsection (2),  
6 [this act] is effective on certification pursuant to [section 12].

7 (2) [Sections 11 and 12] and this section are effective on passage and approval.

8 - END -