

HOUSE BILL NO. 67

INTRODUCED BY M. RYAN

BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; DEFINING "EXTRA DUTY SERVICE"; REVISING FAMILY LAW ORDER PROVISIONS; REVISING CREDITABLE SERVICE PROVISIONS; REVISING PROVISIONS RELATED TO CALCULATING AVERAGE FINAL COMPENSATION; REVISING PROVISIONS RELATED TO CANCELLATION OF ALLOWANCES AND RESTORATION OF MEMBERSHIP FOR DISABILITY RETIREES; REVISING DEATH PAYMENT PROVISIONS; AMENDING SECTIONS 19-20-101, 19-20-305, 19-20-401, 19-20-403, 19-20-805, 19-20-905, AND 19-20-1002, MCA; REPEALING SECTION 19-20-204, MCA; AND PROVIDING AN EFFECTIVE DATE."

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 account, 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 member's highest average earned compensation, determined pursuant to 19-20-805, on which all required contributions have been made.

(4) "Beneficiary" means one or more persons formally designated by a member, ~~or~~ retiree, or alternate payee to receive a retirement allowance or payment upon the death of the member, ~~or~~ retiree, or alternate payee except for a joint annuitant.

(5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a

1 retirement allowance.

2 (6) "Creditable service" is that service defined by 19-20-401.

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

5 (8) (a) "Earned compensation" means, except as limited by subsections (8)(b) and (8)(c) or by
6 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any
7 pretax deductions allowed under the Internal Revenue Code are deducted.

8 (b) Earned compensation does not include:

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

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

12 (A) professional membership dues;

13 (B) maintenance;

14 (C) housing;

15 (D) day care;

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

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

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

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

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

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

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

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

26 (ix) any similar payment or reimbursement made to or on behalf of a member by an employer.

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

29 (9) "Employer" means:

30 (a) the state of Montana;

- 1 (b) a public school district, as provided in 20-6-101 and 20-6-701;
 2 (c) the office of public instruction;
 3 (d) the board of public education;
 4 (e) an education cooperative;
 5 (f) the Montana school for the deaf and blind, as described in 20-8-101;
 6 (g) the Montana youth challenge program, as defined in 10-1-101;
 7 (h) a state youth correctional facility, as defined in 41-5-103;
 8 (i) the Montana university system;
 9 (j) a community college; or
 10 (k) any other agency, political subdivision, or instrumentality of the state that employs a person who is
 11 designated a member of the retirement system pursuant to 19-20-302.

12 (10) "Extra duty service" means service in an educational services capacity that is not compensated as
 13 part of the normally assigned duties and functions of a school district teacher, administrator, or other employee
 14 but is regularly assigned to one or more school district teachers, administrators, or other employees as part of
 15 the regular operation of the school district's curricular and extracurricular programs.

16 ~~(10)~~(11) "Full-time service" means service that is:

- 17 (a) at least 180 days in a fiscal year;
 18 (b) at least 140 hours a month during at least 9 months in a fiscal year; or
 19 (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board
 20 and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a
 21 school district operating under an alternative school calendar must be applied uniformly to all employees of the
 22 school district required to be reported to the retirement system.

23 ~~(11)~~(12) "Internal Revenue Code" has the meaning provided in 15-30-2101.

24 ~~(12)~~(13) "Joint annuitant" means the one person that a retired member who has elected an optional
 25 allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired
 26 member.

27 ~~(13)~~(14) "Member" means a person who has an individual account in the annuity savings account. Unless
 28 otherwise specified, "member" refers to a tier one member or a tier two member. An active member is a person
 29 included under the provisions of 19-20-302. An inactive member is a person included under the provisions of
 30 19-20-303.

1 ~~(14)~~(15) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the
2 lifetime of the retired member.

3 ~~(15)~~(16) "Normal retirement age" means an age no earlier than 60 years of age.

4 ~~(16)~~(17) "Part-time service" means service that is not full-time service. Part-time service must be credited
5 in the proportion that the actual time worked compares to full-time service.

6 ~~(17)~~(18) "Position reportable to the retirement system" means a position in which an individual performs
7 duties that would entitle the person to active membership in the retirement system under the provisions of
8 19-20-302.

9 ~~(18)~~(19) "Regular interest" means interest at a rate set by the retirement board in accordance with
10 19-20-501(2).

11 ~~(19)~~(20) "Retired", "retired member", or "retiree" means a person who is considered in retired member
12 status under the provisions of 19-20-810.

13 ~~(20)~~(21) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired
14 member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

15 ~~(21)~~(22) "Retirement board" or "board" means the retirement system's governing board provided for in
16 2-15-1010.

17 ~~(22)~~(23) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of
18 Montana provided for in 19-20-102.

19 ~~(23)~~(24) "Service" means the performance of duties that would entitle the person to active membership
20 in the retirement system under the provisions of 19-20-302.

21 ~~(24)~~(25) "Termination" or "terminate" means that the employment relationship between the member and
22 the member's employer has been terminated as required in 19-20-810.

23 ~~(25)~~(26) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay,
24 amounts provided under a window or early retirement incentive plan, or other payments contingent on the
25 employee terminating employment.

26 (b) Termination pay does not include:

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

29 (ii) amounts that are payable to a member from a plan for the deferral of compensation under section
30 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

1 ~~(26)~~(27) "Tier one member" means a person who became a member before July 1, 2013, and who has
2 not withdrawn the member's account balance.

3 ~~(27)~~(28) "Tier two member" means a person who became a member on or after July 1, 2013, or who,
4 after withdrawing the member's account balance, became a member again after July 1, 2013.

5 ~~(28)~~(29) "Vested" means that a member has been credited with at least 5 full years of membership
6 service upon which contributions have been made and has a right to a future retirement benefit.

7 ~~(29)~~(30) "Written application" or "written election" means a written instrument, required by statute or the
8 rules of the board, properly signed and filed with the board, that contains all the required information, including
9 documentation that the board considers necessary."
10

11 **Section 2.** Section 19-20-305, MCA, is amended to read:

12 **"19-20-305. Alternate payees -- family law orders.** (1) A participant in a retirement system may have
13 the participant's rights modified or recognized by a family law order.

14 (2) For purposes of this section:

15 (a) "actuarially equivalent amount" means the portion of the participant's benefit transferred to an
16 alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee's lifetime;

17 (b) "alternate payee" means the former spouse of the member or retiree who is entitled to an actuarially
18 equivalent amount or a fixed amount of the member's or retiree's retirement benefit;

19 (c) "family law order" means a certified copy of a ~~judgment, decree, or an~~ order of a court with competent
20 jurisdiction on a form prescribed and provided by the retirement system concerning spousal maintenance or
21 marital property rights that includes a transfer of all or a portion of a participant's ~~payment rights in a right to~~
22 payments from the retirement system to an alternate payee in compliance with this section; and

23 (d) "participant" means a member or retiree of the retirement system.

24 (3) A family law order must identify an alternate payee by full name, current address, date of birth,
25 current phone number, and social security number. An alternate payee's rights and interests granted in
26 compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process.
27 An alternate payee's rights or interests may be modified only by a family law order amending the family law order
28 that established the right or interest or by a full renunciation of the alternate payee's rights by the alternate payee.

29 (4) A family law order may not require:

30 (a) a type or form of benefit, option, or payment that is not available to the affected participant under the

1 retirement system or that would require administration in a manner different from the administrative processes
2 used by the retirement system for administration of retirement benefits in general; or

3 (b) an amount of payment greater than that available to a participant.

4 (5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member
5 contributions may be apportioned to an alternate payee by directing payment of:

6 (i) an actuarially equivalent amount payable for the life of the alternate payee; or

7 (ii) a fixed amount, to be deducted from the participant's benefit, of no more than the amount payable to
8 the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the
9 participant or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.

10 (b) (i) When a family law order directs payment of an actuarially equivalent amount payable to the
11 alternate payee, either the amount of the participant's retirement benefit to be transferred to the alternate payee
12 must be expressed as a percentage share of the retirement benefit payable to the participant or the percentage
13 share must be readily determinable based on the factors provided in the family law order. The participant's benefit
14 must be reduced by the amount determined under this subsection (5)(b)(i).

15 (ii) The amount payable to the alternate payee, calculated under subsection (5)(b)(i), must be actuarially
16 adjusted to provide a benefit payable for the alternate payee's lifetime.

17 (iii) A copy of the alternate payee's birth certificate must be submitted with the family law order.

18 (6) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service,
19 disability, or survivor benefits, the alternate payee is entitled to a lump-sum payment up to the total fixed amount
20 or equal to the percentage share of the participant's benefit transferred to the alternate payee as directed in the
21 family law order.

22 (7) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned
23 between the participant and the alternate payee receiving an actuarially equivalent amount in the same manner
24 as determined under subsection (5)(b)(i).

25 (8) Payments of monthly benefits to the alternate payee must commence on the latest of the following
26 dates:

27 (a) the date the participant begins receiving benefits; or

28 (b) the first day of the month following receipt of a certified family law order and approval of the family
29 law order by the retirement system.

30 (9) The board may assess a participant or an alternate payee for all costs of reviewing and administering

1 a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

2 (10) Each family law order establishing a final obligation concerning payments by the retirement system
3 must contain a statement that the order is subject to review and approval by the board.

4 (11) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled
5 pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again
6 qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this
7 section.

8 (12) (a) In every circumstance, an actuarially equivalent amount payable to an alternate payee must
9 terminate upon the death of the alternate payee. The amount may not be devised, bequeathed, or otherwise
10 transferred by the alternate payee.

11 (b) A family law order may expressly provide that a fixed amount payable to an alternate payee may be
12 transferred upon the death of the alternate payee to a beneficiary designated by the alternate payee. If a family
13 law order does not expressly authorize an alternate payee to designate a beneficiary or if there is no beneficiary
14 designation on file with the retirement system at the time of the alternate payee's death, the fixed amount payable
15 to the alternate payee reverts to the participant or to the joint annuitant or beneficiary of the participant. A fixed
16 amount payable to an alternate payee may not be devised, bequeathed, or otherwise transferred by the alternate
17 payee in any other manner.

18 (13) The retirement system shall give effect to a family law order in a manner that conforms with all other
19 applicable law pertaining to the administration of the retirement system. A family law order may not be construed
20 to provide rights or benefits to any person beyond those rights or benefits expressly provided by law."
21

22 **Section 3.** Section 19-20-401, MCA, is amended to read:

23 **"19-20-401. Creditable service.** (1) The creditable service of a member begins on the date of the
24 member's employment in a capacity prescribed for eligibility in 19-20-302 ~~and accumulates to the member's credit~~
25 ~~on the basis of the retirement board's policy governing creditable service.~~

26 (2) Subject to 19-20-405, the creditable service of a member includes the following:

27 (a) ~~each year period of active membership service for which contributions to the retirement system were~~
28 ~~deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 245, Laws~~
29 ~~of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years~~
30 ~~of service for which the contributions have been withdrawn and not replaced~~ in a position reportable to the

1 retirement system as described in 19-20-302 and credited as provided in this section;

2 (b) any creditable service awarded by the retirement board under 19-20-402 for out-of-state employment;

3 (c) any creditable service awarded by the retirement board under 19-20-403 for employment while on
4 leave;

5 (d) any creditable service awarded by the retirement board under 19-20-404 for service in the military,
6 the red cross, or the merchant marine;

7 (e) any creditable service awarded by the retirement board under 19-20-408 for employment in private
8 schools;

9 (f) any creditable service awarded by the retirement board under 19-20-409 for service transferred after
10 October 1, 1989, from the public employees' retirement system;

11 (g) any creditable service awarded by the retirement board under 19-20-410 for extension service
12 employment;

13 (h) any creditable service awarded by the retirement board under 19-20-411 for absence because of
14 employment-related injury; and

15 (i) any creditable service awarded by the retirement board under 19-20-426 for service provided under
16 the university system retirement program.

17 (3) The retirement board's determination of creditable service under this section is final and conclusive
18 for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the
19 establishment of creditable service, in which case the board shall redetermine the creditable service.

20 (4) Creditable service may be awarded only for a period of membership service or purchased service
21 for which all required contributions and interest, if applicable, have been paid.

22 (5) All accrued creditable service must be forfeited upon withdrawal from the retirement system and may
23 not be reinstated unless the member redeposits the withdrawn contributions as set forth in 19-20-427.

24 (6) Creditable service must be awarded on the basis of a fiscal year beginning July 1 and ending June
25 30 regardless of the member's term of employment service or benefit accrual as established in an employment
26 agreement, in an employer policy, or in another manner and regardless of the term of the employer's school year
27 or fiscal year.

28 (7) Creditable service must be credited based on the full-time or part-time service of the member, as
29 follows:

30 (a) Service provided over 7 or more hours in a day is a full-time day.

1 (b) Full-time service is service that is at least 180 days in a fiscal year, at least 140 hours a month during
2 9 months in a fiscal year, or full-time under an alternative school calendar adopted by a school board that is less
3 than 180 days but meets minimum accreditation requirements of 1,080 hours.

4 (c) Part-time service is service that is less than full-time. Part-time creditable service must be calculated
5 based on the total number of hours, days, or months reported to the retirement system in each fiscal year, divided
6 by the number of hours, days, or months of equivalent full-time service.

7 (8) Creditable service and earned compensation credit must be awarded for extra duty service subject
8 to the following:

9 (a) A member who is credited with full-time creditable service without consideration of the extra duty
10 service may not be awarded additional creditable service for the extra duty service, and the extra duty
11 compensation must be reported and credited as earned compensation to the member.

12 (b) A member who is credited with less than full-time creditable service without consideration of the extra
13 duty service must be awarded additional creditable service and compensation credit for the extra duty service,
14 and time worked must be reported and creditable service and compensation credit awarded as provided in
15 subsection (8)(d).

16 (c) A member who is not employed in a position reportable to the retirement system other than to perform
17 extra duty service must be awarded additional creditable service and compensation credit for the extra duty
18 service, and time worked must be reported and creditable service and compensation credit awarded as provided
19 in subsection (8)(d).

20 (d) (i) If the member is employed by the employer to perform service other than the extra duty service,
21 whether or not in a position reportable to the retirement system, and is compensated for that service on an hourly
22 or daily basis, the employer must report the actual number of hours or days worked in extra duty service with
23 compensation at the hourly or daily rate of pay that the employee earns for service other than extra duty service.
24 The compensation reported for extra duty service must include any increase in the rate of pay or total
25 compensation required to be paid for overtime. Creditable service must be awarded on the basis of the actual
26 time worked in extra duty service.

27 (ii) If the member is not employed by the employer to perform service other than the extra duty service
28 and the extra duty service is compensated at an hourly or daily rate of pay, the employer must report the actual
29 hours or days worked, the hourly or daily rate of pay, and the total compensation paid for the extra duty service.
30 Creditable service must be awarded based on the actual time worked in extra duty service.

1 (iii) If the member is not employed by the employer to perform service other than the extra duty service
 2 and the extra duty service is compensated on a single fee or stipend basis:

3 (A) the employer must report the total fee or stipend paid for the extra duty service and must provide the
 4 retirement system with the employer's base rate of pay for an entry level teacher for the fiscal year in which the
 5 extra duty service is provided; and

6 (B) creditable service must be awarded for the extra duty service based on the following calculations:

7 (I) the base rate of pay must be divided by 187 to determine a daily rate of pay;

8 (II) the total fee or stipend must be divided by the daily rate of pay to determine the number of days
 9 eligible for creditable service; and

10 (III) the number of days eligible for creditable service must be divided by 180 to determine the portion of
 11 a year to be credited as creditable service for the extra duty service.

12 (9) Creditable service may not be awarded in excess of full-time service for any period of time regardless
 13 of the amount of time actually worked in the time period. No more than 1 day of creditable service may be
 14 awarded for any calendar day, no more than 1 month of creditable service may be awarded for any calendar
 15 month, and no more than 1 year of creditable service may be awarded for any fiscal year. Service may not be
 16 carried over or otherwise reported for the accrual of creditable service in any month other than the month in which
 17 the service was actually performed.

18 ~~(4)(10)~~ For a member completing only part-time service during the qualifying period, the first full year's
 19 teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have
 20 earned if the member's first year part-time salary had been full-time fiscal year of membership service on which
 21 a service purchase cost will be calculated, the member's compensation must be annualized to calculate the
 22 service purchase cost.

23 ~~(5)(11)~~ A member may not purchase creditable service under this part after retirement benefit payments
 24 to the member have started, even if the member returns to active member status."

25

26 **Section 4.** Section 19-20-403, MCA, is amended to read:

27 **"19-20-403. Creditable service for employment while on leave.** (1) (a) Subject to 19-20-405, a
 28 member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in
 29 subsection (2) may receive up to 2 years of creditable service for employment while on leave following a break
 30 in service.

1 (b) To be eligible to purchase ~~the service under this section~~, a member:
 2 (i) must be vested in the retirement system;
 3 (ii) must have been ~~a~~ an active member prior to the leave;
 4 (iii) must have ~~completed~~ earned at least 1 full year of creditable service in active membership in the
 5 retirement system subsequent to the member's leave.

6 (2) (a) For each ~~year period~~ of service to be credited, a member who became a member before July 1,
 7 1989, shall contribute ~~for each year of service to be purchased~~ an amount equal to the combined employer and
 8 employee contributions for the member's first full year's salary earned in a position reportable to the retirement
 9 system after the member's return from leave, plus interest.

10 (b) For each ~~year period~~ of service to be credited under this section, a member who became a member
 11 on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial
 12 valuation of the system.

13 ~~(3)(c)~~ The interest on contributions required under subsection (2)(a) must be paid:

14 ~~(a)(i)~~ if a written application to purchase service was signed prior to July 1, 2012, at the rate that the
 15 contributions would have earned had the contributions been in the member's account from the date the member
 16 was eligible to purchase the service; or

17 ~~(b)(ii)~~ if a written application to purchase service is signed on or after July 1, 2012, at the actuarially
 18 assumed interest rate in effect on the date the written application is signed.

19 ~~(4)(d)~~ The contributions and interest may be made in a lump-sum payment or in installments as agreed
 20 between the member and the retirement board.

21 (3) Subject to 19-20-405, a member who is eligible under subsection (5) and who contributes to the
 22 retirement system as provided in subsection (6) may receive up to 2 years of creditable service for unpaid
 23 in-service leave.

24 (4) (a) To be eligible for purchase as in-service leave, the leave must be:

25 (i) a period of temporary absence from work in a position reportable to the retirement system, whether
 26 full leave or intermittent leave and whether the leave is provided solely at the discretion of the employer or is
 27 required to be provided pursuant to generally applicable state or federal law; and

28 (ii) unpaid. In-service leave is unpaid to the extent that the employer is not compensating the member for
 29 the period of absence from work. If the in-service leave is intermittent leave or is partially paid full leave, the leave
 30 is unpaid to the extent that any compensation received for the day, week, or month that includes the leave is less

1 than the amount of compensation the member would have earned but for the leave.

2 (b) Inservice leave does not include:

3 (i) a period of leave or other absence from work that is included as part of the member's regular term
4 of employment, such as personal days, vacation leave, sick leave, summer break, or other nonwork days;

5 (ii) a period of time for which creditable service may be purchased or credited under any other section
6 of this part:

7 (iii) a period designated as a leave of absence pursuant to an oral or written settlement agreement or
8 other agreement between the member and the employer to resolve an employment dispute and resulting in:

9 (A) termination of the member's employment; or

10 (B) other circumstances in which the member and employer do not actually intend for the member to
11 return to regular employment in the preleave position; or

12 (iv) a leave of absence after which the member does not actually return to regular employment in the
13 preleave position.

14 (5) A member is eligible to purchase inservice leave if the member:

15 (a) was regularly employed by the preleave employer with a regular work schedule in a position
16 reportable to the retirement system;

17 (b) remained either employed or in a job-attached status with the preleave employer with a definite date
18 specified to return to work with the preleave employer; and

19 (c) returned to regular work with the preleave employer at the end of the inservice leave.

20 (6) (a) An eligible member may purchase inservice leave at any time after returning to regular work with
21 the preleave employer in a position reportable to the retirement system, subject to the following:

22 (i) A service purchase agreement for the inservice leave must be established for all leave that may be
23 purchased for a fiscal year following the end of that fiscal year.

24 (ii) The service must be purchased and will be credited beginning with the earliest date of the leave.

25 (iii) The amount of leave that may be purchased may not exceed the amount of time that the member
26 would have worked but for the leave as specified in a written employment contract. If the member was not
27 employed under a written employment contract, the amount of leave purchased may not result in the member
28 receiving total creditable service in the fiscal year in which the service is being purchased that exceeds the
29 amount of creditable service the member accrued in the last fiscal year preceding the inservice leave during
30 which the member accrued membership service that did not include purchased service.

1 (b) To purchase inservice leave, the member shall contribute the actuarial cost of the service based on
2 the most recent actuarial valuation of the system subject to the following:

3 (i) Upon completing the purchase, the member must receive earned compensation credit equal to the
4 sum of any earned compensation reported by the employer plus the amount of compensation attributable to the
5 purchased leave.

6 (ii) Failure to return for any reason to regular work in the preleave position on the specified return date
7 or at the end of the inservice leave must be considered a break in service subject to the leave purchase
8 requirements of subsections (1) and (2)."

9

10 **Section 5.** Section 19-20-805, MCA, is amended to read:

11 **"19-20-805. Calculation of average final compensation.** (1) Except as limited by this section, average
12 final compensation is calculated by averaging the earned compensation paid to:

13 (a) a tier one member in 3 consecutive fiscal years of full-time service that yields the highest average;
14 or

15 (b) a tier two member in 5 consecutive fiscal years of full-time service that yields the highest average.

16 (2) (a) The earned compensation of a tier one member who retires under 19-20-802, 19-20-804, or
17 19-20-902 and has less than 3 consecutive years of full-time service during the 5 years immediately preceding
18 the member's termination is the compensation that the member would have earned in the 3 years used to
19 calculate average final compensation had the member's part-time service during the 5 years preceding
20 termination been full-time service.

21 (b) The earned compensation of a tier two member who retires under 19-20-802, 19-20-804, or
22 19-20-902 and has less than 5 consecutive years of full-time service during the 7 years immediately preceding
23 the member's termination is the compensation that the member would have earned in the 5 years used to
24 calculate average final compensation had the member's part-time service during the 7 years preceding
25 termination been full-time service.

26 (3) To determine the compensation that the member would have earned under subsection (2), the
27 compensation reported must be divided by the part-time service credited to the member's account.

28 (4) (a) Subject to subsection (4)(b), if a member has transferred service from the public employees'
29 retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service if a
30 tier one member or 5 consecutive years of full-time service if a tier two member reported to the teachers'

1 retirement system, the member's average final compensation must be calculated as follows:

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

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

13 (b) Compensation reported to the public employees' retirement system used to calculate average final
14 compensation must be adjusted to exclude any compensation that would be considered termination pay under
15 this chapter.

16 ~~(5) (a) If the benefits excluded from earned compensation pursuant to 19-20-101(8)(b) have been~~
17 ~~converted by an employer to earned compensation for all members and have been continuously reported as~~
18 ~~earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted~~
19 ~~benefit amounts must be included in the calculation of average final compensation.~~

20 ~~———— (b) If benefits have been converted to earned compensation as described in subsection (5)(a) but have~~
21 ~~been reported as earned compensation for less than 5 fiscal years or if the member has been given the option~~
22 ~~to have benefits converted to earned compensation, any converted benefits reported as earned compensation~~
23 ~~in the 3 years used to calculate average final compensation may be included in the calculation of average final~~
24 ~~compensation only as termination pay under 19-20-716(1)(b)."~~

25

26 **Section 6.** Section 19-20-905, MCA, is amended to read:

27 **"19-20-905. Cancellation of allowance and restoration of membership.** (1) If a disabled retiree is
28 employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as
29 provided under 19-20-302 position reportable to the retirement system and earns compensation in any fiscal year
30 in excess of the limitation provided in 19-20-904, the retiree's retirement allowance must cease. ~~If the retiree is~~

1 ~~employed full-time by an employer covered under this chapter, and~~ the retiree must again become an active
 2 member of the retirement system effective on the first day of the month following the month in which the earnings
 3 limitation was exceeded.

4 (2) If the member is restored to active membership on or after the attainment of the age of 55 years, the
 5 member's retirement allowance upon subsequent retirement may not exceed the retirement allowance that the
 6 member would have received had the member remained in service during the period of the member's previous
 7 retirement or the sum of the retirement allowance that the member was receiving immediately prior to the
 8 member's last restoration to service and the retirement allowance that the member would have received on
 9 account of the member's service since the member's last restoration had the member entered service at that time
 10 as a new member."

11
 12 **Section 7.** Section 19-20-1002, MCA, is amended to read:

13 **"19-20-1002. Payments upon death of retiree.** (1) In the event of the death of a retired member, a
 14 death benefit of \$500 is payable to the joint annuitant or designated beneficiary.

15 (2) ~~If~~ Except as provided in subsection (4), if the deaths of a retired member and of the joint annuitant
 16 or all designated beneficiaries occur before the total retirement allowance payments made to the retired member
 17 and to the joint annuitant or all designated beneficiaries equal the amount of the member's accumulated
 18 contributions at the time of the member's retirement, the difference between the total retirement allowance paid
 19 and the amount of the accumulated contributions must be paid to the estate of the joint annuitant or to the estate
 20 of the longest-surviving beneficiary.

21 (3) If a deceased member had 5 or more years of creditable service and was retired at the time of death,
 22 the sum of \$200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years
 23 of age.

24 (4) If the retired member elected a 10-year or 20-year period certain and life retirement allowance, the
 25 following provisions apply:

26 (a) If benefits remain payable upon the death of the retired member, the monthly benefit amount will be
 27 paid for the remainder of the period certain to the retired member's designated beneficiary or beneficiaries.

28 (b) If benefits remain payable upon the death of the retired member's last surviving designated
 29 beneficiary, a lump-sum distribution of the amount actuarially determined by the retirement system to be the
 30 present value of the remainder of the benefits payable for the period certain must be paid to the court-appointed

1 personal representative of the last surviving beneficiary's estate on behalf of the estate. If the last surviving
2 beneficiary's estate is not probated, the payment must be made to the last surviving beneficiary's next of kin as
3 set forth in 19-20-717."

4
5 NEW SECTION. **Section 8. Repealer.** The following section of the Montana Code Annotated is
6 repealed:

7 19-20-204. Board's policy governing creditable service.

8
9 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2017.

10 - END -