

Senate Bill 93

In The Senate

January 10, 1981

Introduced and referred  
to Committee on State  
Administration.

January 12, 1981

Fiscal note requested.

January 17, 1981

Fiscal note returned.

January 20, 1981

Committee recommend bill  
do not pass.

1 *Boyer* BILL NO. 93  
 2 INTRODUCED BY *Boyer - Edward Hager*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING CERTAIN  
 5 EMPLOYEES WHO ARE RECEIVING OR ARE ENTITLED TO RECEIVE  
 6 RETIREMENT ALLOWANCES FROM OTHER PUBLIC RETIREMENT PLANS  
 7 FROM MEMBERSHIP IN THE PUBLIC EMPLOYEES', TEACHERS',  
 8 JUDGES', HIGHWAY PATROLMEN'S, SHERIFFS', GAME WARDENS',  
 9 MUNICIPAL POLICE OFFICERS', LOCAL POLICE, AND FIREFIGHTERS'  
 10 RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-403, 19-4-303,  
 11 19-4-305, 19-5-301, 19-6-301, 19-7-301, 19-7-501, 19-8-301,  
 12 19-9-104, 19-9-301, 19-10-302, 19-10-401, 19-10-402,  
 13 19-10-503, AND 19-11-102, MCA."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 19-3-403, MCA, is amended to read:

17 "19-3-403. Exclusions. The following persons may not  
 18 become members of the retirement system:

- 19 (1) elective officers who have not filed with the  
 20 board written requests to become members, except that a  
 21 person so excluded from membership may later become a member  
 22 by otherwise becoming an employee or by written request  
 23 after a subsequent election to office, and if he  
 24 affirmatively exercises the option, the contributions of the  
 25 employer because of his membership shall be the same as they

1 would have been had he not been so excluded;

2 (2) inmates of state institutions who are allowed  
 3 compensation for such service as they are able to perform;

4 (3) persons in state institutions principally for the  
 5 purpose of training, but who receive compensation;

6 (4) independent contractors, unless there is a written  
 7 contract which specifies the creation of an  
 8 employer-employee relationship for purposes of retirement  
 9 coverage under The Public Employees' Retirement System Act;

10 (5) employees serving in employment which does not  
 11 exceed the equivalent of 60 working days in any fiscal year;

12 (6) employees in service on July 1, 1945, or prior  
 13 thereto who filed with the board elections not to become  
 14 members, except that a person so excluded from membership  
 15 may become a member and be eligible thereafter to receive  
 16 the same benefits that he would have received if he had  
 17 never filed an election not to be a member by meeting the  
 18 requirements prescribed in 19-3-505 and 19-3-506;

19 (7) persons directly appointed by the governor who do  
 20 not file with the board an election in writing to become  
 21 members;

22 (8) persons hired on or before [the effective date of  
 23 this act] who are members of any other retirement or pension  
 24 system supported wholly or in part by funds of the United  
 25 States government, any state government, or political

1 subdivision thereof and who are receiving credit in the  
 2 other system for service, it being the purpose of this  
 3 subsection to prevent a person from receiving credit for the  
 4 same service in two retirement systems supported wholly or  
 5 in part by public funds, except when the service qualifies,  
 6 is applied for, and purchased pursuant to 19-3-503. A member  
 7 of the retirement system who, because of his employment by  
 8 the state, is required to become a member of any other  
 9 system described in this subsection shall be considered,  
 10 solely for the purposes of making normal contributions, as  
 11 permanently separated from service. Exclusion under this  
 12 subsection is subject to the following exceptions:

13 (a) When an employer has entered into a collective  
 14 bargaining agreement which includes provisions for payments  
 15 or contributions by the employer in lieu of wages to a  
 16 retirement or pension plan qualified by the internal revenue  
 17 service for its employees, the employees remain eligible, if  
 18 otherwise qualified, for membership in the retirement  
 19 system, and the payments or contributions in lieu of wages  
 20 may not be considered a part of the employees' compensation  
 21 for purposes of computing the employer or employee  
 22 contributions to the retirement system.

23 (b) For the purpose of this subsection (8), persons  
 24 receiving pensions, retirement allowances, or other payments  
 25 from any source on account of employment other than as an

1 employee as defined in this chapter are not considered,  
 2 because of such receipt, members of any other retirement or  
 3 pension system.

4 ~~(9) persons hired after [the effective date of this~~  
 5 ~~act] who are receiving or are eligible to receive a~~  
 6 ~~retirement allowance, except for social security benefits,~~  
 7 ~~from any other retirement system requiring contributions~~  
 8 ~~from the federal government or any state or local governing~~  
 9 ~~body;~~

10 ~~(9)(10)~~ court commissioners or appointive members of  
 11 any board or commission who serve the state or any  
 12 contracting employer intermittently and who are paid on a  
 13 per diem basis;

14 ~~(10)(11)~~ persons who become employees after they have  
 15 reached their 60th birthday and have no creditable service  
 16 in this system and who do not file with the board an  
 17 election to become members;

18 ~~(11)(12)~~ employees of county hospitals or county rest  
 19 homes in the sixth and seventh class counties, unless they  
 20 elect to file with the board an election in writing to  
 21 become members;

22 ~~(12)(13)~~ persons employed by the legislature during the  
 23 legislative session who do not file with the board an  
 24 election in writing to become members;

25 ~~(13)(14)~~ students of any public elementary school, high

1 school, vocational-technical center, or community college or  
 2 any unit of the state university system, except that a  
 3 person so excluded from membership as a student of a public  
 4 community college or a unit of the state university system  
 5 who later becomes a member by otherwise becoming an employee  
 6 may affirmatively exercise the option of qualifying the  
 7 service excluded by this subsection by applying to the board  
 8 in writing within 1 year after becoming a member and become  
 9 eligible to receive credit for the excluded service under  
 10 the provisions of 19-3-505;

11 ~~(14)~~(15) effective October 1, 1978, employees whose  
 12 positions are funded under the federal Comprehensive  
 13 Employment and Training Act (CETA) and who file with the  
 14 board elections not to become members. An employee who  
 15 exercises his election is considered terminated and is  
 16 eligible for a refund under 19-3-703, and any employer  
 17 contributions made on his behalf after October 1, 1978, must  
 18 be returned to the funding agency. If he is subsequently  
 19 transferred to non-CETA employment and consequently becomes  
 20 a member, he may revoke his election within 1 year after the  
 21 transfer date by filing a written revocation with the board  
 22 and he will then be eligible to qualify the service  
 23 previously excluded by this subsection under the provisions  
 24 of 19-3-505.

25 ~~(15)~~(16) the chief administrative officer of any city

1 or county where the chief administrative officer has filed  
 2 an election in writing with the board to be excluded from  
 3 membership, this election to be filed no later than July 1,  
 4 1979, or 30 days after initial employment by a county or  
 5 city whichever is later."

6 Section 2. Section 19-4-303, MCA, is amended to read:  
 7 "19-4-303. Inactive membership. Any person's active  
 8 membership in the retirement system shall terminate, but he  
 9 shall be an inactive member, when:

10 (1) he ceases to be employed in a capacity that allows  
 11 his membership and he has 5 or more years of creditable  
 12 service in the retirement system;

13 (2) he ceases to be employed in a capacity that allows  
 14 his membership and he has less than 5 years of creditable  
 15 service in the retirement system, but his loss of capacity  
 16 to be a member was caused by a personal illness determined  
 17 by the retirement board to be a disability or was caused by  
 18 service in the armed forces of the United States, which  
 19 includes the army, navy, marine corps, air force, and coast  
 20 guard, or by service in the American red cross or merchant  
 21 marine during time of war; or

22 (3) he has 5 or more years creditable service and he  
 23 becomes a member of any other retirement or pension system  
 24 supported wholly or in part by moneys of another government  
 25 agency, except the federal social security retirement

1 system, and the membership in the other retirement system  
 2 would allow credit for the same employment service in two  
 3 retirement systems. However, no person hired on or before  
 4 [the effective date of this act] shall be excluded from  
 5 active membership solely because he is receiving or is  
 6 eligible to receive retirement benefits from another  
 7 retirement system."

8 Section 3. Section 19-4-305, MCA, is amended to read:

9 "19-4-305. ~~Exclusion---initially-employed--after--age~~  
 10 ~~seventy Exclusions.~~ (1) Initial employment of teachers in  
 11 the Montana university system beyond the age of 70 may be  
 12 made upon the recommendation of the president of the  
 13 employing unit and the approval of the board of regents, but  
 14 such employees shall be denied membership in the retirement  
 15 system.

16 ~~(2) A person hired after [the effective date of this~~  
 17 ~~act] may not be a member of the retirement system if he is~~  
 18 ~~receiving or is eligible to receive a retirement allowance,~~  
 19 ~~except for social security benefits, from any other~~  
 20 ~~retirement system requiring contributions from the federal~~  
 21 ~~government or any state or local governing body."~~

22 NEW SECTION. Section 4. Ineligibility for judges'  
 23 retirement system. A judge or justice hired after [the  
 24 effective date of this act] may not be a member of the  
 25 retirement system if he is receiving or is eligible to

1 receive a retirement allowance, except from social security  
 2 benefits, from any other retirement system requiring  
 3 contributions from the federal government or any state or  
 4 local governing body.

5 Section 5. Section 19-5-301, MCA, is amended to read:

6 "19-5-301. Membership. (1) A judge or justice who was  
 7 a member of the PERS prior to March 2, 1967, may elect to  
 8 remain under that system by notifying the public employees'  
 9 retirement board in writing of the election on or before  
 10 October 1, 1967.

11 (2) Every other judge of a district court or justice  
 12 of the supreme court must be a member of the Montana judges'  
 13 retirement system, except as provided in [section 4]."

14 NEW SECTION. Section 6. Ineligibility for highway  
 15 patrolmen's retirement system. A highway patrolman hired  
 16 after [the effective date of this act] may not be a member  
 17 of the retirement system if he is receiving or is eligible  
 18 to receive a retirement allowance, except for social  
 19 security benefits, from any other retirement system  
 20 requiring contributions from the federal government or any  
 21 state or local governing body.

22 Section 7. Section 19-6-301, MCA, is amended to read:

23 "19-6-301. Membership. ~~At~~ Except as provided in  
 24 [section 6], all members of the Montana highway patrol,  
 25 including the supervisor and assistant supervisors, must be

1 members of the retirement system."

2 ~~NEW SECTION.~~ Section 8. Ineligibility for sheriffs'  
3 retirement system. A sheriff hired after [the effective date  
4 of this act] may not be a member of the retirement system if  
5 he is receiving or is eligible to receive a retirement  
6 allowance, except for social security benefits, from any  
7 other retirement system requiring contributions from the  
8 federal government or any state or local governing body.

9 Section 9. Section 19-7-301, MCA, is amended to read:

10 "19-7-301. Membership. ~~Every~~ Except as provided in  
11 [section 8], every sheriff is required to become a member of  
12 the sheriffs' retirement system on July 1, 1974, unless he  
13 was previously a member of the public employees' retirement  
14 system, in which case he may at his option become a member  
15 of the sheriffs' retirement system. All sheriffs who become  
16 members of the sheriffs' retirement system must remain  
17 members so long as actively employed in such capacity."

18 Section 10. Section 19-7-501, MCA, is amended to read:

19 "19-7-501. Eligibility and application for service  
20 retirement. (1) A ~~sheriff--in--service~~ member who has  
21 completed at least 25 years of service and who has reached  
22 the age of 55 years may retire on a service retirement  
23 allowance upon written application to the board, submitted  
24 not less than 30 days or more than 90 days from the desired  
25 date of retirement. The application must state the date he

1 desires to be retired.

2 (2) Retirement is compulsory for any nonelected  
3 sheriff at age 65, except in the case of undersheriffs."

4 ~~NEW SECTION.~~ Section 11. Ineligibility for game  
5 wardens' retirement system. A state game warden hired after  
6 [the effective date of this act] may not be a member of the  
7 retirement system if he is receiving or is eligible to  
8 receive a retirement allowance, except for social security  
9 benefits, from any other retirement system requiring  
10 contributions from the federal government or any state or  
11 local governing body.

12 Section 12. Section 19-8-301, MCA, is amended to read:

13 "19-8-301. Membership. Except as provided in 19-8-302  
14 and [section 11], each state game warden, including all  
15 warden supervisory personnel, whose salary or compensation  
16 for services is paid out of the department of fish,  
17 wildlife, and parks moneys and who is assigned to law  
18 enforcement in the department of fish, wildlife, and parks  
19 shall become a member of the retirement system when first  
20 becoming a state game warden. Except as provided in 19-8-302  
21 and [section 11], all state game wardens shall be members of  
22 the retirement system so long as actively employed in that  
23 capacity."

24 ~~NEW SECTION.~~ Section 13. Ineligibility for municipal  
25 police officers' retirement system. An officer hired after

1 [the effective date of this act] may not be a member of the  
2 retirement system if he is receiving or is eligible to  
3 receive a retirement allowance, except for social security  
4 benefits, from any other retirement system requiring  
5 contributions from the federal government or any state or  
6 local governing body.

7 Section 14. Section 19-9-104, MCA, is amended to read:  
8 "19-9-104. Definitions. Unless the context requires  
9 otherwise, the following definitions apply in this chapter:

10 (1) "Administrator" means the public employees'  
11 retirement division of the department of administration.

12 (2) "Base salary" means the sum of the monthly  
13 compensations for each month in a given calendar year.

14 (3) "Board" means the retirement board described in  
15 2-15-1009.

16 (4) "Credited service" means the aggregate of a  
17 member's prior service and membership service.

18 (5) "Employer" means any city which participated in a  
19 prior plan or which elects to join this plan under 19-9-107.

20 (6) "Employer annuity" means monthly payments for life  
21 derived from employer and state contributions.

22 (7) "Final average salary" means the monthly  
23 compensation of a member, averaged over the last 36 months  
24 of his active service or, in the event he has not been a  
25 member that long, over the period of his membership.

1 (8) "Fund" means the agency account in the treasury  
2 system designated for the use of the plan.

3 (9) "Mandatory retirement date" means the first day of  
4 the month coinciding with or immediately following, if none  
5 coincides, the date on which a member attains age 65.

6 (10) "Member" means a person who is employed by an  
7 employer as a police officer or who is entitled to a  
8 retirement allowance by virtue of his service to an employer  
9 as a police officer except as provided in [section 13].

10 (11) "Member contributions" means the total of the  
11 deductions from the compensation of a member, either made  
12 during a period of active membership hereunder or made under  
13 a prior plan and transferred to this plan, standing to his  
14 credit, together with the interest thereon.

15 (12) "Member's annuity" means monthly payments for life  
16 derived from member contributions.

17 (13) "Membership service" means a period of employment  
18 with an employer occurring after June 30, 1977, during which  
19 the withholdings required by this chapter have been made  
20 from a member's monthly compensation and credited to his  
21 member contributions account. Pro rata credit shall be  
22 granted for employment on a part-time basis or for  
23 employment over a period of less than a complete fiscal  
24 year.

25 (14) "Minimum retirement date" or "normal retirement

1 date" means the first day of the month coinciding with or  
2 immediately following, if none coincides, the date on which  
3 a member becomes both age 50 or older and completes 20 or  
4 more years of credited service.

5 (15) "Monthly compensation" means the wage, excluding  
6 overtime, holiday payments, shift differential payments,  
7 compensation time payments, and payments in lieu of sick  
8 leave and annual leave, a member receives as an active  
9 police officer.

10 (16) Any reference to "municipality", "city", or "town"  
11 includes those jurisdictions which, prior to the effective  
12 date of a county-municipal consolidation, were incorporated  
13 municipalities, subsequent districts created for urban law  
14 enforcement services, or the entire county included in the  
15 county-municipal consolidation.

16 (17) "Plan" means the municipal police officers'  
17 retirement system created by this chapter.

18 (18) "Police officer" means a law enforcement officer  
19 employed by an employer.

20 (19) "Prior plan" means the local police reserve or  
21 retirement fund of a city which elects to join the plan  
22 under 19-9-107 or the statewide police reserve fund  
23 administered by the department of administration in  
24 accordance with Chapter 335, Laws of 1974.

25 (20) "Prior service" means a period of employment as a

1 police officer for which credit was granted to a member  
2 under a prior plan and has been transferred to this plan.

3 (21) "Retirement allowance" means the employer annuity  
4 plus the member's annuity.

5 (22) "Retirement date" means the date on which the  
6 first payment of the retirement, disability, or survivor  
7 benefits of a member or a beneficiary is payable.

8 (23) "Totally and permanently disabled" means that the  
9 board, upon certification by a licensed and practicing  
10 physician, has determined that a member's disability is of  
11 such a nature as to permanently impair his ability to  
12 discharge his normal duties as a police officer."

13 Section 15. Section 19-9-301, MCA, is amended to read:  
14 "19-9-301. Active membership. (1) \* Except as provided  
15 in [section 13], a police officer becomes an active member  
16 under the plan:

17 (a) on the date his employment by an employer  
18 commences;

19 (b) on July 1, 1977, if he is employed by an employer  
20 on that date; or

21 (c) in the case of an employer which elects to join  
22 the plan as provided in 19-9-107, on the effective date of  
23 such election if he is employed by the employer on that  
24 date.

25 (2) Upon becoming eligible for membership, he shall



1 complete such forms and furnish such proof as may be  
2 required by the board."

3 NEW SECTION. Section 16. Ineligibility for service,  
4 disability, or survivorship benefits. A police officer hired  
5 after [the effective date of this act] or his beneficiary is  
6 ineligible to receive service, disability, or survivorship  
7 benefits from the police retirement fund if the officer is  
8 receiving or is entitled to receive a retirement allowance,  
9 except for social security benefits, from any other  
10 retirement system requiring contributions from the federal  
11 government or any state or local governing body.

12 Section 17. Section 19-10-302, MCA, is amended to  
13 read:

14 "19-10-302. Officer's contribution deducted from  
15 salary. The treasurer of an incorporated city which has a  
16 police retirement fund shall retain from the monthly salary  
17 of each police officer on the active list, except those  
18 officers ineligible for benefits under [section 16], a sum  
19 equal to 6% of his monthly compensation for his services as  
20 a police officer, exclusive of overtime and payments made in  
21 lieu of sick leave and annual leave. The monthly deduction  
22 from the salaries of police officers must be paid into the  
23 city's police retirement fund for the purpose of paying the  
24 salaries of police officers on the retired list."

25 Section 18. Section 19-10-401, MCA, is amended to

1 read:

2 "19-10-401. Eligibility for service retirement. The  
3 Except as provided in [section 16], the following persons  
4 are eligible for the police retired list of a city and shall  
5 retire as provided in this section:

6 (1) A person who is employed by any city as a police  
7 officer on July 1, 1975, is eligible for the police retired  
8 list when he has completed 20 years or more in the aggregate  
9 as a probationary officer, a regular officer, or a special  
10 officer of the police department, in any capacity or rank.

11 (2) A person who is first employed by a city as a  
12 police officer after July 1, 1975, is eligible for the  
13 police retired list when he has reached the age of 50 and  
14 has completed 20 years or more in the aggregate as a  
15 probationary officer, a regular officer, or a special  
16 officer of the police department, in any capacity or rank.

17 (3) Police officers, whether first employed before or  
18 after July 1, 1975, who reach the age of 65 while in active  
19 service shall pass from the active list to the retired  
20 list."

21 Section 19. Section 19-10-402, MCA, is amended to  
22 read:

23 "19-10-402. Eligibility for disability retirement.  
24 When a police officer, except an officer ineligible for  
25 benefits under [section 16], receives injuries or

1 disabilities in the active discharge of his duties as a  
2 police officer, which injuries or disabilities are, in the  
3 opinion of the board of police commissioners or city council  
4 of the city or town, of such character as to impair his  
5 ability to discharge his duties as an active police officer,  
6 he shall be placed on the retired list of the city or town."

7 Section 20. Section 19-10-503, MCA, is amended to  
8 read:

9 "19-10-503. Death benefits. (1) Upon the death of a  
10 police officer on the active list or retired list of a city,  
11 except an officer ineligible for benefits under [section  
12 16], his surviving spouse, if there is one, shall, as long  
13 as such spouse remains the surviving spouse, be paid from  
14 the city's police retirement fund a sum equal to one-half  
15 the base salary, excluding overtime and payments in lieu of  
16 sick leave and annual leave, he was receiving as an active  
17 officer computed on the highest salary received in any one  
18 month during his last year of active service.

19 (2) If the officer leaves one or more dependent minor  
20 children, upon his death if he leaves no surviving spouse or  
21 upon the death or remarriage of the surviving spouse, his  
22 surviving dependent minor children, collectively if there is  
23 more than one, shall receive the same monthly payments as a  
24 surviving spouse would receive, until they reach the age of  
25 18 years or are married. The payments shall be made to their

1 duly appointed, qualified, and acting guardian for their  
2 use. If there is more than one such child, upon each child  
3 reaching the age of 18 or marrying, the pro rata payments to  
4 that child shall cease and shall be made to the remaining  
5 children, until all the children have either reached the age  
6 of 18 or are married."

7 Section 21. Section 19-11-102, MCA, is amended to  
8 read:

9 "19-11-102. Formation of fire department relief  
10 association -- membership. (1) The confirmed members of a  
11 fire department, as defined in 19-11-101, may form a local  
12 association to be known as the fire department relief  
13 association of the city or town of .... (naming the city or  
14 town). When an association is formed, it shall be  
15 incorporated under the laws of this state. No

16 (2) The following are ineligible for membership in the  
17 association:

18 (a) a firefighter hired after [the effective date of  
19 this act] who is receiving or is eligible to receive a  
20 retirement allowance, except for social security benefits,  
21 from any other retirement system requiring contributions  
22 from the federal government or any state or local governing  
23 body;

24 (b) one who is serving as a substitute, who is on  
25 probation, or who has not been confirmed as a member of the

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1 fire department ~~is eligible for membership in the~~  
2 ~~association.~~

3 ~~(2)(3)~~ An association may only be formed and  
4 incorporated if:

5 (a) its formation is authorized by subsection (1); and

6 (b) the fire department has firefighting equipment in  
7 serviceable condition which has a value of \$750 or more."

8 Section 22. Codification instruction. (1) Section 4 is  
9 intended to be codified as an integral part of Title 19,  
10 chapter 5, part 3, and the provisions of Title 19, chapter  
11 5, apply to section 4.

12 (2) Section 6 is intended to be codified as an  
13 integral part of Title 19, chapter 6, part 3, and the  
14 provisions of Title 19, chapter 6, apply to section 6.

15 (3) Section 8 is intended to be codified as an  
16 integral part of Title 19, chapter 7, part 3, and the  
17 provisions of Title 19, chapter 7, apply to section 8.

18 (4) Section 11 is intended to be codified as an  
19 integral part of Title 19, chapter 8, part 3, and the  
20 provisions of Title 19, chapter 8, apply to section 11.

21 (5) Section 13 is intended to be codified as an  
22 integral part of Title 19, chapter 9, part 3, and the  
23 provisions of Title 19, chapter 9, apply to section 13.

24 (6) Section 16 is intended to be codified as an  
25 integral part of Title 19, chapter 10, part 4, and the

1 provisions of Title 19, chapter 10, apply to section 16.

-End-

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STATE OF MONTANA

REQUEST NO. 83-81

FISCAL NOTE

Form BD-15

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In compliance with a written request received January 12, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 93 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

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Description of Proposed Legislation

Excludes from the Public Employees', Teachers', Judges', Highway Patrolmen's, Sheriffs', Game Wardens', Municipal Police Officers', Local Police and Firefighters' Retirement Systems any employee hired after the effective date of the act from participation in these retirement systems if the employee is receiving or is eligible to receive a pension paid for in whole or in part by public funds.

Assumptions

1. It is assumed that there are people hired that are receiving a public pension.
2. There is no data available as to how many persons would fall into the impacted category.

Fiscal Impact

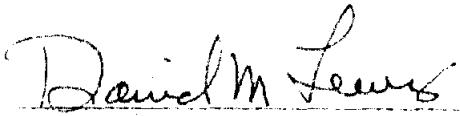
1. The employers would save the employer contribution that would have been required under present law.
2. The retirement system will lose funding that is derived from these contributions. However, additional liabilities are not created. Therefore the overall effect is negligible to the retirement system.

Local Impact

The employers would save the employer contributions required under present statute.

Technical Note

It may be difficult for the employers to determine whether an individual is affected by this bill.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-15-81

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