

HOUSE BILL NO. 778

INTRODUCED BY SPAETH, C. SMITH, JONES, PETERSON, LORY,
WALLIN, NELSON, HARP, EUDAILY, ELLERD

IN THE HOUSE

February 11, 1985	Introduced and referred to Committee on State Administration.
February 20, 1985	Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks.
February 22, 1985	Second reading, do pass. Considered correctly engrossed.
February 23, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 4, 1985	Introduced and referred to Committee on Labor and Employment Relations.
March 6, 1985	On motion, taken from Committee on Labor and Employment Relations and rereferred to Committee on Judiciary. Motion adopted.
March 28, 1985	Committee recommend bill be concurrred in as amended. Report adopted.

March 29, 1985

On motion, rules temporarily suspended in order that all bills considered on second reading on the 70th Legislative Day advance to third reading that same day.

April 1, 1985

Second reading, concurred in as amended.

Third reading, concurred in. Ayes, 41; Noes, 9.

Returned to House with amendments.

IN THE HOUSE

April 2, 1985

Received from Senate.

April 8, 1985

Second reading, amendments concurred in.

On motion, rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in.

Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 778

INTRODUCED BY

Smith C. Smith
Wallin Nelson *Harry Peterson*
Embrey *Ellen*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION ACT PROVISIONS RELATING TO THE AMOUNT OF ATTORNEY FEES, WHEN THEY MAY BE ASSESSED, AND THE ASSESSMENT METHOD; AMENDING SECTION 39-71-612, MCA."

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

Section 1. Section 39-71-612, MCA, is amended to read:

~~"39-71-612. Costs and attorneys' fees payable based on difference between amount paid by insurer and amount later found compensable~~ that may be assessed against an employer or insurer by workers' compensation judge. (1) If an employer or insurer pays or tenders payment of compensation under chapter 71 or 72 of this title, but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the settlement or award granted by the judge is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by ~~the division or~~ the workers' compensation judge if the case has gone to a hearing, ~~based solely upon the difference between the amount settled for or awarded and the amount tendered or paid,~~ may be awarded by

the judge in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by ~~the division or~~ the workers' compensation judge."

NEW SECTION. Section 2. Calculation of attorney fees.

(1) The amount of an attorney's fee assessed against an employer or insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought before the workers' compensation judge. The attorney must document the time spent and give the documentation to the judge. The judge shall determine a reasonable attorney fee and assess costs. He is not bound by the documentation submitted to him. The hourly fee the judge applies to the time spent must be based on a customary and current hourly fee recognized by the legal profession as a reasonable hourly fee for legal work performed in this state.

(2) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of

1 the efforts of the attorney. However, an amount equal to any
2 fee and costs assessed against an employer or insurer under
3 39-71-611 or 39-71-612 and this section must be deducted
4 from the fee an attorney is entitled to from the claimant
5 under a contingency fee arrangement.

6 NEW SECTION. Section 3. Extension of authority. Any
7 existing authority of the division of workers' compensation
8 to make rules on the subject of the provisions of this act
9 is extended to the provisions of this act.

10 NEW SECTION. Section 4. Codification instruction.
11 Section 2 is intended to be codified as an integral part of
12 Title 39, chapter 71, and the provisions of Title 39,
13 chapter 71, apply to section 2.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN395-85

Form **BD-15**

In compliance with a written request received February 13, 19 85, there is hereby submitted a Fiscal Note for H.B. 780 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.

DESCRIPTION OF PROPOSED LEGISLATION:

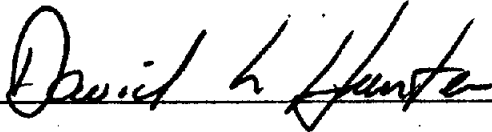
House Bill 780 would remove the requirement that when a member retires, the last five years of creditable service used in the calculation of benefits must be as a contributing member of the Teachers' Retirement System.

ASSUMPTIONS:

Salaries will increase 3.8% in Fiscal Year 1986 and 4.5% in Fiscal Year 1987. Approximately 1000 members will become eligible to purchase an average of 3 years of service, who were not eligible prior to the proposed legislation. Additional contribution of .15% would be required to fund the proposal. 10% of the approximate 300 who retire each year, would buy an average of 3 years of service. Benefits normally increase 10% per year.

FISCAL IMPACT:

<u>On Retirement Fund Revenue</u>	<u>FY1986</u>	<u>FY1987</u>	<u>Expenditures</u>	<u>FY1986</u>	<u>FY1987</u>
<u>Employer Contributions</u>			<u>Annual Benefits</u>		
Under Current Law	\$24,261,097	\$25,352,846	Under Current Law	\$34,837,367	\$38,321,104
Under Proposed Law	<u>24,758,251</u>	<u>25,872,372</u>	Under Proposed Law	<u>34,863,617</u>	<u>38,373,604</u>
Estimated Increase	\$ 497,154	\$ 519,526		\$ 26,250	\$ 52,500
 <u>Net Impact on Retirement Fund</u>					
Revenue	\$ 497,154	\$ 519,526			
Expenditures	<u>26,250</u>	<u>52,500</u>			
Net Fund Increase	\$ 470,904	\$ 467,026			



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 16, 1985

THE COST TO THE STATE AND UNIVERSITY SYSTEM:

<u>STATE AGENCIES</u>	<u>FY1986</u>	<u>FY1987</u>
Under Current Law	\$ 232,331	\$ 242,786
Under Proposed Law	237,092	247,761
	<u>\$ 4,761</u>	<u>\$ 4,975</u>
General Fund	\$ 2,904	\$ 3,035
Other Funds	\$ 1,857	\$ 1,940

<u>UNIVERSITY SYSTEM</u>	<u>FY1986</u>	<u>FY1987</u>
Under Current Law	\$ 4,395,806	\$ 4,593,617
Under Proposed Law	4,485,884	4,687,748
General Fund	<u>\$ 90,078</u>	<u>\$ 94,131</u>

Total Cost Increase to General Fund	<u>\$ 92,982</u>	<u>\$ 96,071</u>
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<u>LOCAL IMPACT:</u>	<u>FY1986</u>	<u>FY1987</u>
<u>Cost To Local Govern.</u>		
Counties		
Under Current Law	\$ 57,649	\$ 60,243
Under Proposed Law	58,830	61,478
	<u>\$ 1,181</u>	<u>\$ 1,235</u>

<u>School Districts</u>		
Under Current Law	\$19,575,311	\$20,456,200
Under Proposed Law	19,976,445	20,875,385
	<u>\$ 401,134</u>	<u>\$ 419,185</u>

LONG-RANGE IMPACT:

Because of salary increases, for each additional 100 members over and above the 1000 members, an additional contribution of .022% would be required. This rate would be sufficient to amortize the additional liability over a 40 year period.

Costs for both state and local government will continue for the next 40 years and will increase as salaries increase.

Benefit increases will continue to increase as more members retire who will have purchased additional service under the proposed law.

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

HOUSE BILL NO. 778

INTRODUCED BY SPAETH, C. SMITH, JONES, PETERSON, LORY,

WALLIN, NELSON, HARP, EUDAILY, ELLERD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION ACT PROVISIONS RELATING TO THE AMOUNT OF ATTORNEY FEES, WHEN THEY MAY BE ASSESSED, AND THE ASSESSMENT METHOD; AMENDING SECTION 39-71-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-71-612, MCA, is amended to read:

"39-71-612. Costs and attorneys' fees ~~payable based on difference--between--amount-paid-by-insurer-and-amount-later found-compensable~~ that may be assessed against an employer or insurer by workers' compensation judge. (1) If an employer or insurer pays or tenders payment of compensation under chapter 71 or 72 of this title, but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the ~~settlement or award granted by the judge~~ is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by ~~the--division--or the workers' compensation judge if the case has gone to a hearing,~~ --based

~~solely upon the difference between the amount settled for or awarded--and--the amount tendered or paid,~~ may be awarded by the judge in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved ~~by the division or the workers' compensation judge.~~"

NEW SECTION. Section 2. Calculation of attorney fees.

(1) The amount of an attorney's fee assessed against an employer or insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought before the workers' compensation judge. The attorney must document the time spent and give the documentation to the judge. The judge shall determine a reasonable attorney fee and assess costs. He is not bound by the documentation submitted to him. The hourly fee the judge applies to the time spent must be based on a customary and current hourly fee recognized by the legal profession as a reasonable hourly fee for legal work performed in this state.

(2) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement

1 under which the attorney receives a percentage of the amount
2 of compensation payments received by the claimant because of
3 the efforts of the attorney. However, an amount equal to any
4 fee and costs assessed against an employer or insurer under
5 39-71-611 or 39-71-612 and this section must be deducted
6 from the fee an attorney is entitled to from the claimant
7 under a contingency fee arrangement.

8 NEW SECTION. Section 3. Extension of authority. Any
9 existing authority of the ~~division of~~ OFFICE OF THE workers'
10 compensation JUDGE to make rules on the subject of the
11 provisions of this act is extended to the provisions of this
12 act.

13 NEW SECTION. Section 4. Codification instruction.
14 Section 2 is intended to be codified as an integral part of
15 Title 39, chapter 71, and the provisions of Title 39,
16 chapter 71, apply to section 2.

17 NEW SECTION. SECTION 5. EFFECTIVE DATE. THIS ACT IS
18 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

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16 or insurer by workers' compensation judge. (1) If an
17 employer or insurer pays or tenders payment of compensation
18 under chapter 71 or 72 of this title, but controversy
19 relates to the amount of compensation due, the case is
20 brought before the workers' compensation judge for
21 adjudication of the controversy, and the settlement-or award
22 granted by the judge is greater than the amount paid or
23 tendered by the employer or insurer, a reasonable attorney's
24 fee as established by the--division--or the workers'
25 compensation judge if the case has gone to a hearing,--based

1 ~~society-upon-the-difference-between-the-amount-settled-for-or~~
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3 the judge in addition to the amount of compensation.

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5 employer or insurer under this section there may be further
6 assessed against the employer or insurer reasonable costs,
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8 hearing on the claimant's behalf. Both the necessity for the
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-End-

STANDING COMMITTEE REPORT

SENATE

March 28 19 85

MR. PRESIDENT

We, your committee on JUDICIARY
having had under consideration HOUSE BILL No. 778
third reading copy (blue)
color
(Senator Mazurek)

REVISE ATTORNEY FEE PROVISIONS OF WORKERS' COMPENSATION ACT

Respectfully report as follows: That HOUSE BILL No. 778

be amended as follows:

1. Page 2, line 18.
Following: "shall"
Strike: "determine a reasonable attorney fee and"
2. Page 2, line 21.
Following: "on"
Strike: "a"
Insert: "the attorney's"
Following: "fee"
Strike: remainder of line 21 through "fee" on line 22

AND AS AMENDED

BE CONCURRED IN

~~DOOR~~

~~DOOR~~


.....
Senator Joe Mazurek

Chairman.

COMMITTEE OF THE WHOLE AMENDMENT

April 1, 1985
~~March 30, 1985~~
DATE

SENATE

2:35
TIME

SENATE JUDICIARY COMMITTEE REPORT OF

MR. CHAIRMAN: I MOVE TO AMEND 3/28/85 TO HOUSE BILL No. 778

~~XXXXXXXXXX~~ (~~XXX~~) as follows:

Amendment No. 1.
Strike: Amendment No. 1 in its entirety

PC3HB778.691

Go

ADOPT
 REJECT

Mazurek
MAZUREK

HOUSE BILL NO. 778

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DETERMINE A REASONABLE ATTORNEY FEE AND assess costs. He is
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THE ATTORNEY'S customary and current hourly fee recognized
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