

House BILL NO. 205

INTRODUCED BY *John Johnson* *Members Lempinkins Ewer*
Cocchiarella BY REQUEST OF THE TEACHERS' RETIREMENT BOARD *Ream*
Lynch *Sertel* *Beck* *Blunth* *Harding* *Rose*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING COMPENSATION THAT MAY BE USED IN THE CALCULATION OF RETIREMENT BENEFITS; CLARIFYING THE DEFINITIONS OF AVERAGE FINAL COMPENSATION AND EARNED COMPENSATION; CLARIFYING QUORUM REQUIREMENTS FOR THE TEACHERS' RETIREMENT BOARD; CLARIFYING THAT ELECTED COUNTY SUPERINTENDENTS ARE PROHIBITED FROM BECOMING ACTIVE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM BUT MAY ELECT MEMBERSHIP UNDER THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE LIMITS ON EARNINGS OF MEMBERS ON DISABILITY RETIREMENT; LIMITING COMPENSATION AS REQUIRED UNDER THE INTERNAL REVENUE CODE; AUTHORIZING TRANSFER OF RETIREMENT CONTRIBUTIONS; ELIMINATING THE REQUIREMENT TO OFFER A TAX-DEFERRED ANNUITY PROGRAM; CLARIFYING APPLICATION OF FAMILY LAW ORDERS TO THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-907, 19-20-101, 19-20-203, 19-20-302, 19-20-602, 19-20-706, AND 19-20-904, MCA; REPEALING SECTION 19-20-207, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees -- family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17, ~~or 20~~; and

(b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an

1 alternate payee in compliance with this section.

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

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

8 (a) a type or form of benefit, option, or payment not available to the affected participant under the
9 appropriate retirement system; or

10 (b) an amount or duration of payment greater than that available to a participant under the
11 appropriate retirement system.

12 (5) A family law order may only provide for payment to an alternate payee as follows:

13 (a) Service retirement benefit payments or withdrawals of member contributions may be
14 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of
15 no more than the amount payable to the participant.

16 (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate
17 payees is the monthly benefit amount that would have been payable on the date of termination of service
18 if the member had retired without disability or death.

19 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
20 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the
21 same ratio as existing benefit payments.

22 (d) Payments must be limited to the life of the appropriate participant. The duration of payments
23 to an alternate payee may be further limited only to a specified maximum time, the life of the alternate
24 payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific
25 amount per month if the number of payments is specified. The alternate payee's rights and interests
26 survive the alternate payee's death and may be transferred by inheritance.

27 (e) The participant may be required to choose a specified form of benefit payment or designate a
28 beneficiary or contingent annuitant if the retirement system allows for that option.

29 (6) The board may assess a participant or an alternate payee for all costs of reviewing and
30 administering a family law order, including reasonable attorney fees. The board may adopt rules to

1 implement this section."

2

3 **Section 2.** Section 19-20-101, MCA, is amended to read:

4 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,
5 the following definitions apply:

6 (1) "Accumulated contributions" means the sum of all the amounts deducted from the
7 compensation of a member or paid by a member and credited to ~~his~~ the member's individual account in the
8 annuity savings fund, together with interest. Regular interest ~~shall~~ must be computed and allowed to
9 provide a benefit at the time of retirement.

10 (2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest,
11 on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate
12 of 8% compounded annually.

13 (3) "Annuity" means the payments made to a beneficiary for life ~~which~~ that are derived from a
14 member's accumulated contributions.

15 (4) "Annuity reserve" means the present value of all payments to be made on account of a
16 member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the
17 retirement board.

18 (5) (a) "Average final compensation" means the average of the earned compensation of a member
19 during the 3 consecutive years of full-time service ~~which~~ that yield the highest average and on which
20 contributions have been made as required by 19-20-602.

21 (b) In determining a member's retirement allowance under 19-20-802 or 19-20-804, ~~the amount~~
22 ~~of each year's earned compensation that may be used in the calculation of average final compensation may~~
23 ~~not exceed the member's earned compensation from the preceding year by more than 10%. the~~
24 compensation for each year of the 3 years that make up the average final compensation may not be greater
25 than 110% of the previous year's compensation included in the calculation of average final compensation
26 or the earned compensation reported to the retirement system, whichever is less, except as provided by
27 rule by the retirement board.

28 (c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered
29 termination pay as provided in subsection (5)(d).

30 (d) If the earned compensation includes any termination pay, the member shall select one of the

1 following options:

2 (i) use the total termination pay in the calculation of the average final compensation. The member
3 and the employer shall pay contributions to the retirement system as are determined by the board to
4 adequately compensate the system for the additional retirement benefit. The contributions must be made
5 at the time the termination pay is received.

6 (ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used
7 in the calculation of the average final compensation, if the member has 4 or more years of service with the
8 employer from which the termination pay was received. The amount of compensation used in the
9 calculation of average final compensation must be divided by the total number of years of creditable service
10 to determine a yearly amount. The member and the employer ~~must~~ shall pay contributions on the
11 termination pay according to the rates provided for in 19-20-602(1) and 19-20-605(1).

12 (iii) exclude the termination pay from the average final compensation. No contribution is required
13 of either the employer or member, and contributions made under 19-20-602 and 19-20-605 must be
14 refunded.

15 (e) For purposes of this subsection (5), termination pay includes any form of termination pay or
16 any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other
17 payment for time not worked other than compensation received while on sick leave or authorized leave of
18 absence.

19 (6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other
20 benefit provided by the retirement system.

21 (7) "Creditable service" is that service defined by 19-20-401.

22 (8) "Earned compensation" means ~~the full compensation, pay, or salary actually paid to a member~~
23 ~~and reported to the retirement system, including amounts paid under a salary reduction agreement, a~~
24 ~~cafeteria plan, a tax sheltered annuity, a deferred compensation program, and the value of any housing~~
25 ~~provided by the employer. The employer shall fix the value of any housing provided. The term does not~~
26 ~~include any other amounts paid in kind or fringe benefits not actually paid to a member, except as limited~~
27 by [section 8], remuneration paid for services by a member out of funds controlled by an employer, as
28 defined under this chapter, before any tax-deferred deductions allowed under the Internal Revenue Code,
29 exclusive of maintenance, allowances, and expenses. The earned compensation is ~~the full compensation,~~
30 ~~pay, or salary~~ remuneration that would have been paid to a member for full-time service but was not paid

1 to the member because of a reduction in compensation, pay, or salary due to a temporary absence,
 2 provided that the retirement system receives the contribution required by 19-20-413. The earned
 3 compensation of a member who had less than 3 consecutive years of full-time service during the 5 years
 4 preceding ~~his~~ the member's retirement is the compensation, pay, or salary ~~which he~~ that the member would
 5 have earned had ~~his~~ the member's part-time service been full-time service. The earned compensation of
 6 a member who is awarded a disability retirement allowance prior to the completion of a full year is the
 7 compensation, pay, or salary ~~which he~~ that the member would have received had ~~he~~ the member completed
 8 the full year, except that any termination pay, as defined in subsection (5)(e), received by the member is
 9 limited to the amount actually paid and is not the amount ~~he~~ that the member would have earned had ~~he~~
 10 the member completed the full year.

11 (9) "Employer" means the state of Montana, the trustees of a district, or any other agency or
 12 subdivision of the state ~~which that~~ employs a person who is designated a member of the retirement system.

13 (10) "Full-time service" means service ~~which that~~ is full-time and ~~which that~~ extends over a normal
 14 academic year of at least 9 months. With respect to those members employed by the office of the
 15 superintendent of public instruction, any other state agency or institution, or the office of a county
 16 superintendent, "full-time service" means service ~~which that~~ is full-time and ~~which that~~ totals at least 9
 17 months in any ~~one~~ year.

18 (11) "Member" means a person who has an individual account in the annuity savings fund. An
 19 active member is a person included under the provisions of 19-20-302. An inactive member is a person
 20 included under the provisions of 19-20-303.

21 (12) "Part-time service" means service ~~which that~~ is less than full-time or ~~which that~~ totals less than
 22 9 months in any ~~one~~ year. Part-time service ~~shall~~ must be credited in the proportion that the actual time
 23 worked bears to full-time service.

24 (13) "Pension" means the payments made to a beneficiary for life ~~which that~~ are paid out of the
 25 pension accumulation fund.

26 (14) "Pension reserve" means the present value of all payments to be made on account of a pension
 27 computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

28 (15) "Prior service" means employment of the same nature as service defined in subsection (20)
 29 ~~of this section~~ but rendered before September 1, 1937.

30 (16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate

1 as may be set by the retirement board in accordance with 19-20-501(2).

2 (17) "Retirement allowance" means the annuity plus the pension.

3 (18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

4 (19) "Retirement system" means the teachers' retirement system of the state of Montana provided
5 for in 19-20-102.

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

8

9 **Section 3.** Section 19-20-203, MCA, is amended to read:

10 **"19-20-203. Officers and employees of retirement board.** (1) It is the duty of the retirement board
11 to:

12 ~~(1)(a)~~ (a) elect a ~~chairman~~ presiding officer from its membership;

13 ~~(2)(b)~~ (b) appoint a secretary who may be one of its members;

14 ~~(3)(c)~~ (c) employ technical or administrative employees who are necessary for the transaction of the
15 business of the retirement system; and

16 ~~(4)(d)~~ (d) designate an actuary who meets the qualifications established by the retirement board to
17 assist the retirement board with the technical actuarial aspects of the operation of the retirement system,
18 which includes establishing mortality and service tables and making an actuarial investigation at least once
19 every 5 years into the mortality, service, and compensation experience of the members and beneficiaries
20 of the retirement system.

21 (2) A quorum of the board is three members."

22

23 **Section 4.** Section 19-20-302, MCA, is amended to read:

24 **"19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following
25 persons must be active members of the retirement system, with the exception that those persons who
26 became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to
27 become members under the provisions of the law at that time are not required to be members:

28 (a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

29 (b) any person who is an administrative officer or a member of the instructional or scientific staff

30 of:

- 1 (i) a vocational-technical center; or
- 2 (ii) a unit of the Montana university system and who has not elected or is not required to participate
3 in the optional retirement program under Title 19, chapter 21;
- 4 (c) any person employed as a speech therapist, school nurse, or school psychologist or in an
5 instructional services capacity by the office of the superintendent of public instruction, the office of a
6 county superintendent, a special education cooperative, a public institution of the state of Montana, the
7 Montana state school for the deaf and blind, or a school district;
- 8 (d) any person who is an administrative officer or a member of the instructional staff of the board
9 of public education;
- 10 (e) any person who has elected not to become a member of the retirement system and is reentering
11 service in a capacity prescribed by ~~(a), (b), (c), or (d)~~ of this subsection (1)(a), (1)(b), (1)(c), or (1)(d);
- 12 (f) any person who has elected not to become a member of the retirement system, who has been
13 continuously employed in a capacity prescribed by ~~(a), (b), (c), or (d)~~ of this subsection (1)(a), (1)(b), (1)(c),
14 or (1)(d) since the time of the election, and who may elect to become a member of the retirement system.
- 15 (2) A person elected to the office of county superintendent of schools after July 1, 1995, is not
16 eligible for optional membership in the public employees retirement system under the provisions of 19-3-412
17 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement
18 system. The retirement system membership of an elected county superintendent of schools as of June 30,
19 1995, must remain unchanged for as long as the person continues to serve in the capacity of county
20 superintendent of schools.
- 21 ~~(2)(3)~~ In order to be eligible for active membership, ~~any~~ a person described in subsection (1) or (2)
22 must:
- 23 (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any
24 fiscal year; and
- 25 (b) have the compensation for the person's creditable service totally paid by an employer.
- 26 ~~(3)(4)~~ (a) A substitute teacher:
- 27 (i) may elect to become an active member of the retirement system on the first day of employment
28 in any fiscal year; or
- 29 (ii) shall become an active member of the retirement system on the 31st day of employment in any
30 fiscal year if the substitute teacher has not elected membership under subsection ~~(3)(a)(i)~~ (4)(a)(i).

1 (b) The employer shall give written notification to a substitute teacher on the first day of
2 employment in any fiscal year of the option to elect membership under subsection ~~(3)(a)(i)~~ (4)(a)(i).

3 ~~(4)(5)~~ A substitute teacher who did not elect membership under subsection ~~(3)(a)(i)~~ (4)(a)(i) and
4 who subsequently becomes a member must be awarded creditable service for substitute teaching service
5 if the substitute teacher contributes:

6 (a) an amount equal to the combined employee and employer contributions that would have been
7 made if the substitute teacher had elected membership; plus

8 (b) interest at the rate the contributions would have earned if they had been on deposit with the
9 retirement system.

10 ~~(5)(6)~~ At any time a person's eligibility to become a member of the retirement system is in doubt,
11 the retirement board shall determine the person's eligibility for membership. All persons in similar
12 circumstances ~~shall~~ must be treated alike."

13
14 **Section 5.** Section 19-20-602, MCA, is amended to read:

15 **"19-20-602. Annuity savings fund -- member's contribution.** The annuity savings fund is a fund
16 in which the contributions for the members to provide for their annuities ~~shall~~ must be accumulated in
17 individual accounts for each member. The normal contribution of each member is 7.044% of ~~his~~ the
18 member's earned compensation. Contributions to and payments from the annuity savings fund ~~shall~~ must
19 be made in the following manner:

20 (1) (a) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954,
21 as amended and applicable on July 1, 1985, shall pick up and pay the contributions ~~which~~ that would be
22 payable by the member under this section for service rendered after June 30, 1985.

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

27 (c) The member's contributions picked up by the employer must be payable from the same source
28 as is used to pay compensation to the member and must be included in the member's ~~wages as defined~~
29 ~~in 19-1-102 and his~~ earned compensation as ~~used to define his average final compensation~~ defined in
30 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount

1 of the member's contributions picked up by the employer and remit the total of the contributions to the
2 retirement board.

3 (d) The deductions ~~shall~~ must be made notwithstanding that the minimum compensation provided
4 by law for a member may be reduced ~~thereby by the deductions.~~ ~~Every~~ Each member is considered to
5 consent to the deductions prescribed by this section, and payment of salary or compensation less the
6 deductions is a complete discharge of all claims ~~whatsoever~~ for the services rendered by the member during
7 the period covered by the payment, except as to the benefits provided by the retirement system.

8 (2) In addition to the normal contributions and subject to the approval of the retirement board, ~~any~~
9 a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of
10 contribution, an amount equal to ~~any~~ accumulated contributions ~~which he~~ that the member has previously
11 withdrawn, plus interest in the amount the contributions would have earned had the contributions not been
12 withdrawn.

13 (3) The accumulated contributions of a member withdrawn by ~~him~~ the member or paid to ~~his~~ the
14 member's estate or to ~~his~~ the member's designated beneficiary in event of ~~his~~ the member's death ~~shall~~
15 must be paid from the annuity savings fund. Upon the retirement of a member, ~~his~~ the member's
16 accumulated contributions ~~shall~~ must be transferred from the annuity savings fund to the pension
17 accumulation fund."

18

19 **Section 6.** Section 19-20-706, MCA, is amended to read:

20 "**19-20-706. Exemption from taxation and legal process.** Except as provided in ~~19-2-907~~ [section
21 9], the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions
22 of the retirement system and the accumulated contributions and cash and securities in the various funds
23 of the retirement system are:

24 (1) exempted from any state, county, or municipal tax of the state of Montana except for:

25 (a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined
26 pursuant to 15-30-111(2)(c)(ii); or

27 (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after
28 June 30, 1985, as provided in 19-20-602;

29 (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or
30 equity, or any other process; and

1 (3) unassignable except as specifically provided in this chapter."

2

3 **Section 7.** Section 19-20-904, MCA, is amended to read:

4 **"19-20-904. Adjustment of allowance.** (1) If ~~any~~ a disability beneficiary is engaged in or is able
5 to engage in a gainful occupation paying more than the difference between ~~his~~ the beneficiary's retirement
6 allowance and ~~his~~ the beneficiary's average final compensation or the difference between the median salary
7 of those members retired during the preceding fiscal year and ~~his~~ the beneficiary's retirement allowance,
8 whichever is greater, ~~his pension shall~~ the retirement allowance must be reduced to an amount ~~which that,~~
9 together with ~~his annuity~~ and the amount earnable by ~~him~~ the beneficiary, is equal to ~~his~~ the beneficiary's
10 average final compensation or the median salary of those members retired during the preceding fiscal year,
11 whichever is greater.

12 (2) If ~~his~~ the beneficiary's earning capacity is changed later, ~~his pension~~ the beneficiary's retirement
13 allowance may be further modified, but the new ~~pension~~ allowance may not exceed the ~~pension~~ retirement
14 allowance originally granted or an amount ~~which that,~~ when added to the amount earnable by the
15 beneficiary, ~~together with his annuity~~ equals ~~his~~ the beneficiary's average final compensation.

16 (3) The board may, in its discretion, require a recipient of a disability retirement allowance to
17 annually submit an earning statement and any documentation necessary to support the earnings of the
18 recipient.

19 ~~(3)(4)~~ (4) A beneficiary restored to active service at a salary less than the average final compensation
20 upon the basis of which ~~he~~ the beneficiary was retired may not become a member of the retirement system
21 while receiving a reduced benefit."

22

23 **NEW SECTION. Section 8. Compensation limit.** Compensation in excess of the limitations set
24 forth in section 401(a)(17) of the Internal Revenue Code must be disregarded for individuals who are not
25 eligible employees. The limitation on compensation for eligible employees may not be less than the amount
26 that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this
27 section, an eligible employee is an individual who was a member in the retirement system prior to July 1,
28 1996.

29

30 **NEW SECTION. Section 9. Alternate payees -- family law orders.** (1) A participant in a retirement

1 system may have the participant's rights modified or recognized by a family law order.

2 (2) For purposes of this section:

3 (a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent
4 annuitant of the retirement system designated pursuant to this chapter; and

5 (b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction
6 under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights
7 that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an
8 alternate payee in compliance with this section.

9 (3) A family law order must identify an alternate payee by full name, current address, and social
10 security number. An alternate payee's rights and interests granted in compliance with this section are not
11 subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights
12 or interests may be modified only by a family law order amending the family law order that established the
13 right or interest.

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

15 (a) a type or form of benefit, option, or payment not available to the affected participant under the
16 appropriate retirement system; or

17 (b) an amount or duration of payment greater than that available to a participant under the
18 appropriate retirement system.

19 (5) A family law order may only provide for payment to an alternate payee as follows:

20 (a) Service retirement benefit payments or withdrawals of member contributions may be
21 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of
22 no more than the amount payable to the participant.

23 (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate
24 payees is the monthly benefit amount that would have been payable on the date of termination of service
25 if the member had retired without disability or death.

26 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
27 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the
28 same ratio as existing benefit payments.

29 (d) Payments must be limited to the life of the appropriate participant. The duration of payments
30 to an alternate payee may be further limited only to a specified maximum time, the life of the alternate

1 payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific
2 amount per month if the number of payments is specified. The alternate payee's rights and interests
3 survive the alternate payee's death and may be transferred by inheritance.

4 (e) The participant may be required to choose a specified form of benefit payment or designate a
5 beneficiary or contingent annuitant if the retirement system allows for that option.

6 (6) The board may assess a participant or an alternate payee for all costs of reviewing and
7 administering a family law order, including reasonable attorney fees. The board may adopt rules to
8 implement this section.

9

10 **NEW SECTION. Section 10. Rollover or transfer of public employee accumulated contributions.**

11 (1) A member who is eligible to qualify service under this chapter may at any time before retirement apply
12 to roll over or transfer the member's accumulated contributions on deposit with any other qualified
13 retirement plan. The total amount transferred to the retirement system may not exceed the amount due
14 to purchase service.

15 (2) If the account includes both tax-deferred and taxed contributions, the transferring agency shall
16 identify the member's tax-deferred and taxed contribution and interest balances at the time the transfer is
17 made.

18

19 **NEW SECTION. Section 11. Repealer.** Section 19-20-207, MCA, is repealed.

20

21 **NEW SECTION. Section 12. Codification instruction.** (1) [Sections 8 and 9] are intended to be
22 codified as an integral part of Title 19, chapter 20, and the provisions of Title 19, chapter 20, apply to
23 [sections 8 and 9].

24 (2) [Section 10] is intended to be codified as an integral part of Title 19, chapter 20, part 4, and
25 the provisions of Title 19, chapter 20, part 4, apply to [section 10].

26

27 **NEW SECTION. Section 13. Effective dates.** (1) [Sections 1 through 3, 5 through 7, and 9
28 through 12 and this section] are effective on passage and approval.

29 (2) [Sections 4 and 8] are effective July 1, 1995.

30

-END-

Fiscal Note for HB0205, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

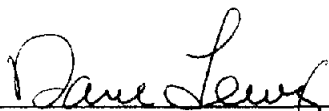
An act generally revising the laws relating to the Teachers' Retirement System; clarifying compensation that may be used in the calculation of retirement benefits; clarifying the definition of average final compensation and earned compensation; clarifying quorum requirements for the teachers' retirement board; clarifying that elected county superintendents are prohibited from becoming active members of the public employees' retirement system but may elect membership under the teachers' retirement system; clarifying the limits on earnings of members on disability retirement; limiting compensation as required under the internal revenue code; authorizing transfer of retirement contributions; eliminating the requirement to offer a tax-deferred annuity program; clarifying application of family law orders to the teachers' retirement system.

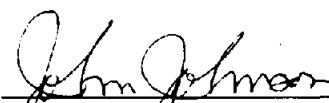
ASSUMPTIONS:

1. HB0205 clarifies certain benefit provisions of the Teachers' Retirement System and does not enhance benefits. Therefore, there is no actuarial cost and no fiscal impact.

FISCAL IMPACT:

None

 1-19-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JOHN JOHNSON, PRIMARY SPONSOR DATE
Fiscal Note for HB0205, as introduced

HB 205

House BILL NO. 205

INTRODUCED BY

John Johnson *Wenahen* *Leimpkins* *Emek*
Cocchiarella *By Request of the Teachers' Retirement Board* *Bream*
Lynch *Scott* *Beck* *Almott* *Harding* *Ross*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING COMPENSATION THAT MAY BE USED IN THE CALCULATION OF RETIREMENT BENEFITS; CLARIFYING THE DEFINITIONS OF AVERAGE FINAL COMPENSATION AND EARNED COMPENSATION; CLARIFYING QUORUM REQUIREMENTS FOR THE TEACHERS' RETIREMENT BOARD; CLARIFYING THAT ELECTED COUNTY SUPERINTENDENTS ARE PROHIBITED FROM BECOMING ACTIVE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM BUT MAY ELECT MEMBERSHIP UNDER THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE LIMITS ON EARNINGS OF MEMBERS ON DISABILITY RETIREMENT; LIMITING COMPENSATION AS REQUIRED UNDER THE INTERNAL REVENUE CODE; AUTHORIZING TRANSFER OF RETIREMENT CONTRIBUTIONS; ELIMINATING THE REQUIREMENT TO OFFER A TAX-DEFERRED ANNUITY PROGRAM; CLARIFYING APPLICATION OF FAMILY LAW ORDERS TO THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-907, 19-20-101, 19-20-203, 19-20-302, 19-20-602, 19-20-706, AND 19-20-904, MCA; REPEALING SECTION 19-20-207, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees -- family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17, ~~or~~ ~~20~~; and

(b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an



1 alternate payee in compliance with this section.

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

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

8 (a) a type or form of benefit, option, or payment not available to the affected participant under the
9 appropriate retirement system; or

10 (b) an amount or duration of payment greater than that available to a participant under the
11 appropriate retirement system.

12 (5) A family law order may only provide for payment to an alternate payee as follows:

13 (a) Service retirement benefit payments or withdrawals of member contributions may be
14 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of
15 no more than the amount payable to the participant.

16 (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate
17 payees is the monthly benefit amount that would have been payable on the date of termination of service
18 if the member had retired without disability or death.

19 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
20 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the
21 same ratio as existing benefit payments.

22 (d) Payments must be limited to the life of the appropriate participant. The duration of payments
23 to an alternate payee may be further limited only to a specified maximum time, the life of the alternate
24 payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific
25 amount per month if the number of payments is specified. The alternate payee's rights and interests
26 survive the alternate payee's death and may be transferred by inheritance.

27 (e) The participant may be required to choose a specified form of benefit payment or designate a
28 beneficiary or contingent annuitant if the retirement system allows for that option.

29 (6) The board may assess a participant or an alternate payee for all costs of reviewing and
30 administering a family law order, including reasonable attorney fees. The board may adopt rules to

1 implement this section."

2

3 **Section 2.** Section 19-20-101, MCA, is amended to read:

4 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,
5 the following definitions apply:

6 (1) "Accumulated contributions" means the sum of all the amounts deducted from the
7 compensation of a member or paid by a member and credited to ~~his~~ the member's individual account in the
8 annuity savings fund, together with interest. Regular interest ~~shall~~ must be computed and allowed to
9 provide a benefit at the time of retirement.

10 (2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest,
11 on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate
12 of 8% compounded annually.

13 (3) "Annuity" means the payments made to a beneficiary for life ~~which~~ that are derived from a
14 member's accumulated contributions.

15 (4) "Annuity reserve" means the present value of all payments to be made on account of a
16 member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the
17 retirement board.

18 (5) (a) "Average final compensation" means the average of the earned compensation of a member
19 during the 3 consecutive years of full-time service ~~which~~ that yield the highest average and on which
20 contributions have been made as required by 19-20-602.

21 (b) In determining a member's retirement allowance under 19-20-802 or 19-20-804, ~~the amount~~
22 ~~of each year's earned compensation that may be used in the calculation of average final compensation may~~
23 ~~not exceed the member's earned compensation from the preceding year by more than 10% the~~
24 ~~compensation for each year of the 3 years that make up the average final compensation may not be greater~~
25 ~~than 110% of the previous year's compensation included in the calculation of average final compensation~~
26 ~~or the earned compensation reported to the retirement system, whichever is less,~~ except as provided by
27 rule by the retirement board.

28 (c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered
29 termination pay as provided in subsection (5)(d).

30 (d) If the earned compensation includes any termination pay, the member shall select one of the

1 following options:

2 (i) use the total termination pay in the calculation of the average final compensation. The member
3 and the employer shall pay contributions to the retirement system as are determined by the board to
4 adequately compensate the system for the additional retirement benefit. The contributions must be made
5 at the time the termination pay is received.

6 (ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used
7 in the calculation of the average final compensation, if the member has 4 or more years of service with the
8 employer from which the termination pay was received. The amount of compensation used in the
9 calculation of average final compensation must be divided by the total number of years of creditable service
10 to determine a yearly amount. The member and the employer ~~must~~ shall pay contributions on the
11 termination pay according to the rates provided for in 19-20-602(1) and 19-20-605(1).

12 (iii) exclude the termination pay from the average final compensation. No contribution is required
13 of either the employer or member, and contributions made under 19-20-602 and 19-20-605 must be
14 refunded.

15 (e) For purposes of this subsection (5), termination pay includes any form of termination pay or
16 any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other
17 payment for time not worked other than compensation received while on sick leave or authorized leave of
18 absence.

19 (6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other
20 benefit provided by the retirement system.

21 (7) "Creditable service" is that service defined by 19-20-401.

22 (8) "Earned compensation" means ~~the full compensation, pay, or salary actually paid to a member~~
23 ~~and reported to the retirement system, including amounts paid under a salary reduction agreement, a~~
24 ~~cafeteria plan, a tax-sheltered annuity, a deferred compensation program, and the value of any housing~~
25 ~~provided by the employer. The employer shall fix the value of any housing provided. The term does not~~
26 ~~include any other amounts paid in kind or fringe benefits not actually paid to a member, except as limited~~
27 by [section 8], remuneration paid for services by a member out of funds controlled by an employer, as
28 defined under this chapter, before any tax-deferred deductions allowed under the Internal Revenue Code,
29 exclusive of maintenance, allowances, and expenses. The earned compensation is ~~the full compensation,~~
30 ~~pay, or salary~~ remuneration that would have been paid to a member for full-time service but was not paid

1 to the member because of a reduction in compensation, pay, or salary due to a temporary absence,
 2 provided that the retirement system receives the contribution required by 19-20-413. The earned
 3 compensation of a member who had less than 3 consecutive years of full-time service during the 5 years
 4 preceding ~~his~~ the member's retirement is the compensation, pay, or salary ~~which he~~ that the member
 5 have earned had ~~he~~ the member's part-time service been full-time service. The earned compensation of
 6 a member who is awarded a disability retirement allowance prior to the completion of a full year is the
 7 compensation, pay, or salary ~~which he~~ that the member would have received had ~~he~~ the member
 8 the full year, except that any termination pay, as defined in subsection (5)(e), received by the member is
 9 limited to the amount actually paid and is not the amount ~~he~~ that the member would have earned had ~~he~~
 10 the member completed the full year.

11 (9) "Employer" means the state of Montana, the trustees of a district, or any other agency or
 12 subdivision of the state ~~which that~~ employs a person who is designated a member of the retirement system.

13 (10) "Full-time service" means service ~~which that~~ is full-time and ~~which that~~ extends over a normal
 14 academic year of at least 9 months. With respect to those members employed by the office of the
 15 superintendent of public instruction, any other state agency or institution, or the office of a county
 16 superintendent, "full-time service" means service ~~which that~~ is full-time and ~~which that~~ totals at least 9
 17 months in any ~~one~~ year.

18 (11) "Member" means a person who has an individual account in the annuity savings fund. An
 19 active member is a person included under the provisions of 19-20-302. An inactive member is a person
 20 included under the provisions of 19-20-303.

21 (12) "Part-time service" means service ~~which that~~ is less than full-time or ~~which that~~ totals less than
 22 9 months in any ~~one~~ year. Part-time service ~~shall~~ must be credited in the proportion that the actual time
 23 worked bears to full-time service.

24 (13) "Pension" means the payments made to a beneficiary for life ~~which that~~ are paid out of the
 25 pension accumulation fund.

26 (14) "Pension reserve" means the present value of all payments to be made on account of a pension
 27 computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

28 (15) "Prior service" means employment of the same nature as service defined in subsection (20)
 29 ~~of this section~~ but rendered before September 1, 1937.

30 (16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate

1 as may be set by the retirement board in accordance with 19-20-501(2).

2 (17) "Retirement allowance" means the annuity plus the pension.

3 (18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

4 (19) "Retirement system" means the teachers' retirement system of the state of Montana provided
5 for in 19-20-102.

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

8

9 **Section 3.** Section 19-20-203, MCA, is amended to read:

10 "**19-20-203. Officers and employees of retirement board.** (1) It is the duty of the retirement board
11 to:

12 ~~(1)(a)~~ elect a ~~chairman~~ presiding officer from its membership;

13 ~~(2)(b)~~ appoint a secretary who may be one of its members;

14 ~~(3)(c)~~ employ technical or administrative employees who are necessary for the transaction of the
15 business of the retirement system; and

16 ~~(4)(d)~~ designate an actuary who meets the qualifications established by the retirement board to
17 assist the retirement board with the technical actuarial aspects of the operation of the retirement system,
18 which includes establishing mortality and service tables and making an actuarial investigation at least once
19 every 5 years into the mortality, service, and compensation experience of the members and beneficiaries
20 of the retirement system.

21 (2) A quorum of the board is three members."

22

23 **Section 4.** Section 19-20-302, MCA, is amended to read:

24 "**19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following
25 persons must be active members of the retirement system, with the exception that those persons who
26 became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to
27 become members under the provisions of the law at that time are not required to be members:

28 (a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

29 (b) any person who is an administrative officer or a member of the instructional or scientific staff

30 of:

- 1 (i) a vocational-technical center; or
- 2 (ii) a unit of the Montana university system and who has not elected or is not required to participate
3 in the optional retirement program under Title 19, chapter 21;
- 4 (c) any person employed as a speech therapist, school nurse, or school psychologist or in an
5 instructional services capacity by the office of the superintendent of public instruction, the office of a
6 county superintendent, a special education cooperative, a public institution of the state of Montana, the
7 Montana state school for the deaf and blind, or a school district;
- 8 (d) any person who is an administrative officer or a member of the instructional staff of the board
9 of public education;
- 10 (e) any person who has elected not to become a member of the retirement system and is reentering
11 service in a capacity prescribed by ~~(a), (b), (c), or (d) of this subsection~~ (1)(a), (1)(b), (1)(c), or (1)(d);
- 12 (f) any person who has elected not to become a member of the retirement system, who has been
13 continuously employed in a capacity prescribed by ~~(a), (b), (c), or (d) of this subsection~~ (1)(a), (1)(b), (1)(c),
14 or (1)(d) since the time of the election, and who may elect to become a member of the retirement system.
- 15 (2) A person elected to the office of county superintendent of schools after July 1, 1995, is not
16 eligible for optional membership in the public employees retirement system under the provisions of 19-3-412
17 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement
18 system. The retirement system membership of an elected county superintendent of schools as of June 30,
19 1995, must remain unchanged for as long as the person continues to serve in the capacity of county
20 superintendent of schools.
- 21 ~~(2)(3)~~ In order to be eligible for active membership, ~~any~~ a person described in subsection (1) or (2)
22 must:
- 23 (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any
24 fiscal year; and
- 25 (b) have the compensation for the person's creditable service totally paid by an employer.
- 26 ~~(3)(4)~~ (a) A substitute teacher:
- 27 (i) may elect to become an active member of the retirement system on the first day of employment
28 in any fiscal year; or
- 29 (ii) shall become an active member of the retirement system on the 31st day of employment in any
30 fiscal year if the substitute teacher has not elected membership under subsection ~~(3)(a)(i)~~ (4)(a)(i).

1 (b) The employer shall give written notification to a substitute teacher on the first day of
2 employment in any fiscal year of the option to elect membership under subsection ~~(3)(a)(i)~~ (4)(a)(i).

3 ~~(4)(5)~~ A substitute teacher who did not elect membership under subsection ~~(3)(a)(i)~~ (4)(a)(i) and
4 who subsequently becomes a member must be awarded creditable service for substitute teaching service
5 if the substitute teacher contributes:

6 (a) an amount equal to the combined employee and employer contributions that would have been
7 made if the substitute teacher had elected membership; plus

8 (b) interest at the rate the contributions would have earned if they had been on deposit with the
9 retirement system.

10 ~~(5)(6)~~ At any time a person's eligibility to become a member of the retirement system is in doubt,
11 the retirement board shall determine the person's eligibility for membership. All persons in similar
12 circumstances ~~shall~~ must be treated alike."

13
14 **Section 5.** Section 19-20-602, MCA, is amended to read:

15 "**19-20-602. Annuity savings fund -- member's contribution.** The annuity savings fund is a fund
16 in which the contributions for the members to provide for their annuities ~~shall~~ must be accumulated in
17 individual accounts for each member. The normal contribution of each member is 7.044% of ~~his~~ the
18 member's earned compensation. Contributions to and payments from the annuity savings fund ~~shall~~ must
19 be made in the following manner:

20 (1) (a) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954,
21 as amended and applicable on July 1, 1985, shall pick up and pay the contributions ~~which~~ that would be
22 payable by the member under this section for service rendered after June 30, 1985.

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

27 (c) The member's contributions picked up by the employer must be payable from the same source
28 as is used to pay compensation to the member and must be included in the member's ~~wages as defined~~
29 ~~in 19-1-102 and his~~ earned compensation as ~~used to define his average final compensation~~ defined in
30 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount

1 of the member's contributions picked up by the employer and remit the total of the contributions to the
2 retirement board.

3 (d) The deductions ~~shall~~ must be made notwithstanding that the minimum compensation provided
4 by law for a member may be reduced ~~thereby~~ by the deductions. ~~Every~~ Each member is considered to
5 consent to the deductions prescribed by this section, and payment of salary or compensation less the
6 deductions is a complete discharge of all claims ~~whatsoever~~ for the services rendered by the member during
7 the period covered by the payment, except as to the benefits provided by the retirement system.

8 (2) In addition to the normal contributions and subject to the approval of the retirement board, ~~any~~
9 a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of
10 contribution, an amount equal to ~~any~~ accumulated contributions ~~which he~~ that the member has previously
11 withdrawn, plus interest in the amount the contributions would have earned had the contributions not been
12 withdrawn.

13 (3) The accumulated contributions of a member withdrawn by ~~him~~ the member or paid to ~~his~~ the
14 member's estate or to ~~his~~ the member's designated beneficiary in event of ~~his~~ the member's death ~~shall~~
15 must be paid from the annuity savings fund. Upon the retirement of a member, ~~his~~ the member's
16 accumulated contributions ~~shall~~ must be transferred from the annuity savings fund to the pension
17 accumulation fund."

18

19 **Section 6.** Section 19-20-706, MCA, is amended to read:

20 "**19-20-706. Exemption from taxation and legal process.** Except as provided in ~~19-2-907~~ [section
21 9], the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions
22 of the retirement system and the accumulated contributions and cash and securities in the various funds
23 of the retirement system are:

24 (1) exempted from any state, county, or municipal tax of the state of Montana except for:

25 (a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined
26 pursuant to 15-30-111(2)(c)(ii); or

27 (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after
28 June 30, 1985, as provided in 19-20-602;

29 (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or
30 equity, or any other process; and

1 (3) unassignable except as specifically provided in this chapter."

2

3 **Section 7.** Section 19-20-904, MCA, is amended to read:

4 **"19-20-904. Adjustment of allowance.** (1) If ~~any~~ a disability beneficiary is engaged in or is able
5 to engage in a gainful occupation paying more than the difference between ~~his~~ the beneficiary's retirement
6 allowance and ~~his~~ the beneficiary's average final compensation or the difference between the median salary
7 of those members retired during the preceding fiscal year and ~~his~~ the beneficiary's retirement allowance,
8 whichever is greater, ~~his pension shall~~ the retirement allowance must be reduced to an amount ~~which~~ that.
9 together with ~~his annuity and~~ the amount earnable by ~~him~~ the beneficiary, is equal to ~~his~~ the beneficiary's
10 average final compensation or the median salary of those members retired during the preceding fiscal year,
11 whichever is greater.

12 (2) If ~~his~~ the beneficiary's earning capacity is changed later, ~~his pension~~ the beneficiary's retirement
13 allowance may be further modified, but the new ~~pension~~ allowance may not exceed the ~~pension~~ retirement
14 allowance originally granted or an amount ~~which~~ that, when added to the amount earnable by the
15 beneficiary, ~~together with his annuity~~ equals ~~his~~ the beneficiary's average final compensation.

16 (3) The board may, in its discretion, require a recipient of a disability retirement allowance to
17 annually submit an earning statement and any documentation necessary to support the earnings of the
18 recipient.

19 ~~(3)(4)~~ (4) A beneficiary restored to active service at a salary less than the average final compensation
20 upon the basis of which ~~he~~ the beneficiary was retired may not become a member of the retirement system
21 while receiving a reduced benefit."

22

23 **NEW SECTION. Section 8. Compensation limit.** Compensation in excess of the limitations set
24 forth in section 401(a)(17) of the Internal Revenue Code must be disregarded for individuals who are not
25 eligible employees. The limitation on compensation for eligible employees may not be less than the amount
26 that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this
27 section, an eligible employee is an individual who was a member in the retirement system prior to July 1,
28 1996.

29

30 **NEW SECTION. Section 9. Alternate payees -- family law orders.** (1) A participant in a retirement

1 system may have the participant's rights modified or recognized by a family law order.

2 (2) For purposes of this section:

3 (a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent
4 annuitant of the retirement system designated pursuant to this chapter; and

5 (b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction
6 under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights
7 that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an
8 alternate payee in compliance with this section.

9 (3) A family law order must identify an alternate payee by full name, current address, and social
10 security number. An alternate payee's rights and interests granted in compliance with this section are not
11 subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights
12 or interests may be modified only by a family law order amending the family law order that established the
13 right or interest.

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

15 (a) a type or form of benefit, option, or payment not available to the affected participant under the
16 appropriate retirement system; or

17 (b) an amount or duration of payment greater than that available to a participant under the
18 appropriate retirement system.

19 (5) A family law order may only provide for payment to an alternate payee as follows:

20 (a) Service retirement benefit payments or withdrawals of member contributions may be
21 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of
22 no more than the amount payable to the participant.

23 (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate
24 payees is the monthly benefit amount that would have been payable on the date of termination of service
25 if the member had retired without disability or death.

26 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
27 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the
28 same ratio as existing benefit payments.

29 (d) Payments must be limited to the life of the appropriate participant. The duration of payments
30 to an alternate payee may be further limited only to a specified maximum time, the life of the alternate

1 payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific
2 amount per month if the number of payments is specified. The alternate payee's rights and interests
3 survive the alternate payee's death and may be transferred by inheritance.

4 (e) The participant may be required to choose a specified form of benefit payment or designate a
5 beneficiary or contingent annuitant if the retirement system allows for that option.

6 (6) The board may assess a participant or an alternate payee for all costs of reviewing and
7 administering a family law order, including reasonable attorney fees. The board may adopt rules to
8 implement this section.

9

10 **NEW SECTION. Section 10. Rollover or transfer of public employee accumulated contributions.**

11 (1) A member who is eligible to qualify service under this chapter may at any time before retirement apply
12 to roll over or transfer the member's accumulated contributions on deposit with any other qualified
13 retirement plan. The total amount transferred to the retirement system may not exceed the amount due
14 to purchase service.

15 (2) If the account includes both tax-deferred and taxed contributions, the transferring agency shall
16 identify the member's tax-deferred and taxed contribution and interest balances at the time the transfer is
17 made.

18

19 **NEW SECTION. Section 11. Repealer.** Section 19-20-207, MCA, is repealed.

20

21 **NEW SECTION. Section 12. Codification instruction.** (1) [Sections 8 and 9] are intended to be
22 codified as an integral part of Title 19, chapter 20, and the provisions of Title 19, chapter 20, apply to
23 [sections 8 and 9].

24 (2) [Section 10] is intended to be codified as an integral part of Title 19, chapter 20, part 4, and
25 the provisions of Title 19, chapter 20, part 4, apply to [section 10].

26

27 **NEW SECTION. Section 13. Effective dates.** (1) [Sections 1 through 3, 5 through 7, and 9
28 through 12 and this section] are effective on passage and approval.

29 (2) [Sections 4 and 8] are effective July 1, 1995.

30

-END-

House BILL NO. 205

1
2
3
4
5
6
7
8

INTRODUCED BY John Johnson Members Lempinkins Esner
Cocciarella BY REQUEST OF THE TEACHERS' RETIREMENT BOARD Ream
Lynch Vertel Beak Donott Harding Rom

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
TEACHERS' RETIREMENT SYSTEM; CLARIFYING COMPENSATION THAT MAY BE USED IN THE
CALCULATION OF RETIREMENT BENEFITS; CLARIFYING THE DEFINITIONS OF AVERAGE FINAL
COMPENSATION AND EARNED COMPENSATION; CLARIFYING QUORUM REQUIREMENTS FOR THE

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.



HB 205
THIRD READING

1 HOUSE BILL NO. 205

2 INTRODUCED BY J. JOHNSON, MENAHAN, SIMPKINS, EWER, COCCHIARELLA, REAM, GALVIN,

3 LYNCH, HERTEL, BECK, ARNOTT, HARDING, ROSE, WENNEMAR

4 BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
7 TEACHERS' RETIREMENT SYSTEM; CLARIFYING COMPENSATION THAT MAY BE USED IN THE
8 CALCULATION OF RETIREMENT BENEFITS; CLARIFYING THE DEFINITIONS OF AVERAGE FINAL
9 COMPENSATION AND EARNED COMPENSATION; CLARIFYING QUORUM REQUIREMENTS FOR THE
10 TEACHERS' RETIREMENT BOARD; CLARIFYING THAT ELECTED COUNTY SUPERINTENDENTS ARE
11 PROHIBITED FROM BECOMING ACTIVE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
12 BUT MAY ELECT MEMBERSHIP UNDER THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE LIMITS
13 ON EARNINGS OF MEMBERS ON DISABILITY RETIREMENT; LIMITING COMPENSATION AS REQUIRED
14 UNDER THE INTERNAL REVENUE CODE; AUTHORIZING TRANSFER OF RETIREMENT CONTRIBUTIONS;
15 ELIMINATING THE REQUIREMENT TO OFFER A TAX-DEFERRED ANNUITY PROGRAM; CLARIFYING
16 APPLICATION OF FAMILY LAW ORDERS TO THE TEACHERS' RETIREMENT SYSTEM; AMENDING
17 SECTIONS 19-2-907, 19-20-101, 19-20-203, 19-20-302, 19-20-602, 19-20-706, AND 19-20-904, MCA;
18 REPEALING SECTION 19-20-207, MCA; AND PROVIDING EFFECTIVE DATES."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 **Section 1.** Section 19-2-907, MCA, is amended to read:

23 **"19-2-907. Alternate payees -- family law orders.** (1) A participant in a retirement system may
24 have the participant's rights modified or recognized by a family law order.

25 (2) For purposes of this section:

26 (a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent
27 annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17~~or~~
28 ~~20~~; and

29 (b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction
30 under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights

1 that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an
2 alternate payee in compliance with this section.

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

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

9 (a) a type or form of benefit, option, or payment not available to the affected participant under the
10 appropriate retirement system; or

11 (b) an amount or duration of payment greater than that available to a participant under the
12 appropriate retirement system.

13 (5) A family law order may only provide for payment to an alternate payee as follows:

14 (a) Service retirement benefit payments or withdrawals of member contributions may be
15 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of
16 no more than the amount payable to the participant.

17 (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate
18 payees is the monthly benefit amount that would have been payable on the date of termination of service
19 if the member had retired without disability or death.

20 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
21 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the
22 same ratio as existing benefit payments.

23 (d) Payments must be limited to the life of the appropriate participant. The duration of payments
24 to an alternate payee may be further limited only to a specified maximum time, the life of the alternate
25 payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific
26 amount per month if the number of payments is specified. The alternate payee's rights and interests
27 survive the alternate payee's death and may be transferred by inheritance.

28 (e) The participant may be required to choose a specified form of benefit payment or designate a
29 beneficiary or contingent annuitant if the retirement system allows for that option.

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

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

3

4 **Section 2.** Section 19-20-101, MCA, is amended to read:

5 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,
6 the following definitions apply:

7 (1) "Accumulated contributions" means the sum of all the amounts deducted from the
8 compensation of a member or paid by a member and credited to ~~his~~ the member's individual account in the
9 annuity savings fund, together with interest. Regular interest ~~shall~~ must be computed and allowed to
10 provide a benefit at the time of retirement.

11 (2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest,
12 on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate
13 of 8% compounded annually.

14 (3) "Annuity" means the payments made to a beneficiary for life ~~which~~ that are derived from a
15 member's accumulated contributions.

16 (4) "Annuity reserve" means the present value of all payments to be made on account of a
17 member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the
18 retirement board.

19 (5) (a) "Average final compensation" means the average of the earned compensation of a member
20 during the 3 consecutive years of full-time service ~~which~~ that yield the highest average and on which
21 contributions have been made as required by 19-20-602.

22 (b) In determining a member's retirement allowance under 19-20-802 or 19-20-804, ~~the amount~~
23 ~~of each year's earned compensation that may be used in the calculation of average final compensation may~~
24 ~~not exceed the member's earned compensation from the preceding year by more than 10% the~~
25 ~~compensation for each year of the 3 years that make up the average final compensation may not be greater~~
26 ~~than 110% of the previous year's compensation included in the calculation of average final compensation~~
27 ~~or the earned compensation reported to the retirement system, whichever is less, except as provided by~~
28 rule by the retirement board.

29 (c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered
30 termination pay as provided in subsection (5)(d).

1 (d) If the earned compensation includes any termination pay, the member shall select one of the
2 following options:

3 (i) use the total termination pay in the calculation of the average final compensation. The member
4 and the employer shall pay contributions to the retirement system as are determined by the board to
5 adequately compensate the system for the additional retirement benefit. The contributions must be made
6 at the time the termination pay is received.

7 (ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used
8 in the calculation of the average final compensation, if the member has 4 or more years of service with the
9 employer from which the termination pay was received. The amount of compensation used in the
10 calculation of average final compensation must be divided by the total number of years of creditable service
11 to determine a yearly amount. The member and the employer ~~must~~ shall pay contributions on the
12 termination pay according to the rates provided for in 19-20-602(1) and 19-20-605(1).

13 (iii) exclude the termination pay from the average final compensation. No contribution is required
14 of either the employer or member, and contributions made under 19-20-602 and 19-20-605 must be
15 refunded.

16 (e) For purposes of this subsection (5), termination pay includes any form of termination pay or
17 any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other
18 payment for time not worked other than compensation received while on sick leave or authorized leave of
19 absence.

20 (6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other
21 benefit provided by the retirement system.

22 (7) "Creditable service" is that service defined by 19-20-401.

23 (8) "Earned compensation" means ~~the full compensation, pay, or salary actually paid to a member~~
24 ~~and reported to the retirement system, including amounts paid under a salary reduction agreement, a~~
25 ~~cafeteria plan, a tax sheltered annuity, a deferred compensation program, and the value of any housing~~
26 ~~provided by the employer. The employer shall fix the value of any housing provided. The term does not~~
27 ~~include any other amounts paid in kind or fringe benefits not actually paid to a member, except as limited~~
28 by [section 8], remuneration paid for services by a member out of funds controlled by an employer, as
29 defined under this chapter, before any tax-deferred deductions allowed under the Internal Revenue Code,
30 exclusive of maintenance, allowances, and expenses. The earned compensation is ~~the full compensation,~~

1 ~~pay, or salary~~ remuneration that would have been paid to a member for full-time service but was not paid
 2 to the member because of a reduction in compensation, pay, or salary due to a temporary absence,
 3 provided that the retirement system receives the contribution required by 19-20-413. The earned
 4 compensation of a member who had less than 3 consecutive years of full-time service during the 5 years
 5 preceding ~~his~~ the member's retirement is the compensation, pay, or salary ~~which he~~ that the member would
 6 have earned had ~~his~~ the member's part-time service been full-time service. The earned compensation of
 7 a member who is awarded a disability retirement allowance prior to the completion of a full year is the
 8 compensation, pay, or salary ~~which he~~ that the member would have received had ~~he~~ the member completed
 9 the full year, except that any termination pay, as defined in subsection (5)(e), received by the member is
 10 limited to the amount actually paid and is not the amount ~~he~~ that the member would have earned had ~~he~~
 11 the member completed the full year.

12 (9) "Employer" means the state of Montana, the trustees of a district, or any other agency or
 13 subdivision of the state ~~which that~~ that employs a person who is designated a member of the retirement system.

14 (10) "Full-time service" means service ~~which that~~ that is full-time and ~~which that~~ that extends over a normal
 15 academic year of at least 9 months. With respect to those members employed by the office of the
 16 superintendent of public instruction, any other state agency or institution, or the office of a county
 17 superintendent, "full-time service" means service ~~which that~~ that is full-time and ~~which that~~ that totals at least 9
 18 months in any ~~one~~ year.

19 (11) "Member" means a person who has an individual account in the annuity savings fund. An
 20 active member is a person included under the provisions of 19-20-302. An inactive member is a person
 21 included under the provisions of 19-20-303.

22 (12) "Part-time service" means service ~~which that~~ that is less than full-time or ~~which that~~ that totals less than
 23 9 months in any ~~one~~ year. Part-time service ~~shall~~ must be credited in the proportion that the actual time
 24 worked bears to full-time service.

25 (13) "Pension" means the payments made to a beneficiary for life ~~which that~~ that are paid out of the
 26 pension accumulation fund.

27 (14) "Pension reserve" means the present value of all payments to be made on account of a pension
 28 computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

29 (15) "Prior service" means employment of the same nature as service defined in subsection (20)
 30 ~~of this section~~ but rendered before September 1, 1937.

1 (16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate
2 as may be set by the retirement board in accordance with 19-20-501(2).

3 (17) "Retirement allowance" means the annuity plus the pension.

4 (18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

5 (19) "Retirement system" means the teachers' retirement system of the state of Montana provided
6 for in 19-20-102.

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

9

10 **Section 3.** Section 19-20-203, MCA, is amended to read:

11 "**19-20-203. Officers and employees of retirement board.** (1) It is the duty of the retirement board
12 to:

13 ~~(1)(a)~~ elect a ~~chairman~~ presiding officer from its membership;

14 ~~(2)(b)~~ appoint a secretary who may be one of its members;

15 ~~(3)(c)~~ employ technical or administrative employees who are necessary for the transaction of the
16 business of the retirement system; and

17 ~~(4)(d)~~ designate an actuary who meets the qualifications established by the retirement board to
18 assist the retirement board with the technical actuarial aspects of the operation of the retirement system,
19 which includes establishing mortality and service tables and making an actuarial investigation at least once
20 every 5 years into the mortality, service, and compensation experience of the members and beneficiaries
21 of the retirement system.

22 (2) A quorum of the board is three members."

23

24 **Section 4.** Section 19-20-302, MCA, is amended to read:

25 "**19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following
26 persons must be active members of the retirement system, with the exception that those persons who
27 became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to
28 become members under the provisions of the law at that time are not required to be members:

29 (a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

30 (b) any person who is an administrative officer or a member of the instructional or scientific staff

1 of:

2 (i) a vocational-technical center; or

3 (ii) a unit of the Montana university system and who has not elected or is not required to participate
4 in the optional retirement program under Title 19, chapter 21;

5 (c) any person employed as a speech therapist, school nurse, or school psychologist or in an
6 instructional services capacity by the office of the superintendent of public instruction, the office of a
7 county superintendent, a special education cooperative, a public institution of the state of Montana, the
8 Montana state school for the deaf and blind, or a school district;

9 (d) any person who is an administrative officer or a member of the instructional staff of the board
10 of public education;

11 (e) any person who has elected not to become a member of the retirement system and is reentering
12 service in a capacity prescribed by ~~(a), (b), (c), or (d)~~ of this subsection (1)(a), (1)(b), (1)(c), or (1)(d);

13 (f) any person who has elected not to become a member of the retirement system, who has been
14 continuously employed in a capacity prescribed by ~~(a), (b), (c), or (d)~~ of this subsection (1)(a), (1)(b), (1)(c),
15 or (1)(d) since the time of the election, and who may elect to become a member of the retirement system.

16 (2) A person elected to the office of county superintendent of schools after July 1, 1995, is not
17 eligible for optional membership in the public employees retirement system under the provisions of 19-3-412
18 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement
19 system. The retirement system membership of an elected county superintendent of schools as of June 30,
20 1995, must remain unchanged for as long as the person continues to serve in the capacity of county
21 superintendent of schools.

22 ~~(2)(3)~~ In order to be eligible for active membership, ~~any~~ a person described in subsection (1) or (2)
23 must:

24 (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any
25 fiscal year; and

26 (b) have the compensation for the person's creditable service totally paid by an employer.

27 ~~(3)(4)~~ (a) A substitute teacher:

28 (i) may elect to become an active member of the retirement system on the first day of employment
29 in any fiscal year; or

30 (ii) shall become an active member of the retirement system on the 31st day of employment in any

1 fiscal year if the substitute teacher has not elected membership under subsection ~~(3)(a)(i)~~ (4)(a)(i).

2 (b) The employer shall give written notification to a substitute teacher on the first day of
3 employment in any fiscal year of the option to elect membership under subsection ~~(3)(a)(i)~~ (4)(a)(i).

4 ~~(4)(5)~~ A substitute teacher who did not elect membership under subsection ~~(3)(a)(i)~~ (4)(a)(i) and
5 who subsequently becomes a member must be awarded creditable service for substitute teaching service
6 if the substitute teacher contributes:

7 (a) an amount equal to the combined employee and employer contributions that would have been
8 made if the substitute teacher had elected membership; plus

9 (b) interest at the rate the contributions would have earned if they had been on deposit with the
10 retirement system.

11 ~~(5)(6)~~ At any time a person's eligibility to become a member of the retirement system is in doubt,
12 the retirement board shall determine the person's eligibility for membership. All persons in similar
13 circumstances ~~shall~~ must be treated alike."

14

15 **Section 5.** Section 19-20-602, MCA, is amended to read:

16 **"19-20-602. Annuity savings fund -- member's contribution.** The annuity savings fund is a fund
17 in which the contributions for the members to provide for their annuities ~~shall~~ must be accumulated in
18 individual accounts for each member. The normal contribution of each member is 7.044% of ~~his~~ the
19 member's earned compensation. Contributions to and payments from the annuity savings fund ~~shall~~ must
20 be made in the following manner:

21 (1) (a) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954,
22 as amended and applicable on July 1, 1985, shall pick up and pay the contributions ~~which~~ that would be
23 payable by the member under this section for service rendered after June 30, 1985.

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

28 (c) The member's contributions picked up by the employer must be payable from the same source
29 as is used to pay compensation to the member and must be included in the member's ~~wages as defined~~
30 ~~in 19-1-102 and his~~ earned compensation as ~~used to define his average final compensation~~ defined in

1 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount
 2 of the member's contributions picked up by the employer and remit the total of the contributions to the
 3 retirement board.

4 (d) The deductions ~~shall~~ must be made notwithstanding that the minimum compensation provided
 5 by law for a member may be reduced ~~thereby by the deductions.~~ ~~Every~~ Each member is considered to
 6 consent to the deductions prescribed by this section, and payment of salary or compensation less the
 7 deductions is a complete discharge of all claims ~~whatsoever~~ for the services rendered by the member during
 8 the period covered by the payment, except as to the benefits provided by the retirement system.

9 (2) In addition to the normal contributions and subject to the approval of the retirement board, ~~any~~
 10 a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of
 11 contribution, an amount equal to ~~any~~ accumulated contributions ~~which he~~ that the member has previously
 12 withdrawn, plus interest in the amount the contributions would have earned had the contributions not been
 13 withdrawn.

14 (3) The accumulated contributions of a member withdrawn by ~~him~~ the member or paid to ~~his~~ the
 15 member's estate or to ~~his~~ the member's designated beneficiary in event of ~~his~~ the member's death ~~shall~~
 16 must be paid from the annuity savings fund. Upon the retirement of a member, ~~his~~ the member's
 17 accumulated contributions ~~shall~~ must be transferred from the annuity savings fund to the pension
 18 accumulation fund."

19
 20 **Section 6.** Section 19-20-706, MCA, is amended to read:

21 "**19-20-706. Exemption from taxation and legal process.** Except as provided in ~~19-2-907~~ [section
 22 9], the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions
 23 of the retirement system and the accumulated contributions and cash and securities in the various funds
 24 of the retirement system are:

25 (1) exempted from any state, county, or municipal tax of the state of Montana except for:

26 (a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined
 27 pursuant to 15-30-111(2)(c)(ii); or

28 (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after
 29 June 30, 1985, as provided in 19-20-602;

30 (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or

1 equity, or any other process; and

2 (3) unassignable except as specifically provided in this chapter."

3

4 **Section 7.** Section 19-20-904, MCA, is amended to read:

5 "19-20-904. **Adjustment of allowance.** (1) If ~~any~~ a disability beneficiary is engaged in or is able
6 to engage in a gainful occupation paying more than the difference between ~~his~~ the beneficiary's retirement
7 allowance and ~~his~~ the beneficiary's average final compensation or the difference between the median salary
8 of those members retired during the preceding fiscal year and ~~his~~ the beneficiary's retirement allowance,
9 whichever is greater, ~~his pension shall~~ the retirement allowance must be reduced to an amount ~~which~~ that,
10 together with ~~his annuity and~~ the amount earnable by ~~him~~ the beneficiary, is equal to ~~his~~ the beneficiary's
11 average final compensation or the median salary of those members retired during the preceding fiscal year,
12 whichever is greater.

13 (2) If ~~his~~ the beneficiary's earning capacity is changed later, ~~his pension~~ the beneficiary's retirement
14 allowance may be further modified, but the new ~~pension allowance~~ may not exceed the ~~pension retirement~~
15 allowance originally granted or an amount ~~which~~ that, when added to the amount earnable by the
16 beneficiary, ~~together with his annuity~~ equals ~~his~~ the beneficiary's average final compensation.

17 (3) The board may, in its discretion, require a recipient of a disability retirement allowance to
18 annually submit an earning statement and any documentation necessary to support the earnings of the
19 recipient.

20 ~~(3)(4)~~ (4) A beneficiary restored to active service at a salary less than the average final compensation
21 upon the basis of which ~~he~~ the beneficiary was retired may not become a member of the retirement system
22 while receiving a reduced benefit."

23

24 NEW SECTION. **Section 8. Compensation limit.** Compensation in excess of the limitations set
25 forth in section 401(a)(17) of the Internal Revenue Code must be disregarded for individuals who are not
26 eligible employees. The limitation on compensation for eligible employees may not be less than the amount
27 that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this
28 section, an eligible employee is an individual who was a member in the retirement system prior to July 1,
29 1996.

30

1 **NEW SECTION. Section 9. Alternate payees -- family law orders.** (1) A participant in a retirement
2 system may have the participant's rights modified or recognized by a family law order.

3 (2) For purposes of this section:

4 (a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent
5 annuitant of the retirement system designated pursuant to this chapter; and

6 (b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction
7 under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights
8 that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an
9 alternate payee in compliance with this section.

10 (3) A family law order must identify an alternate payee by full name, current address, and social
11 security number. An alternate payee's rights and interests granted in compliance with this section are not
12 subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights
13 or interests may be modified only by a family law order amending the family law order that established the
14 right or interest.

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

16 (a) a type or form of benefit, option, or payment not available to the affected participant under the
17 appropriate retirement system; or

18 (b) an amount or duration of payment greater than that available to a participant under the
19 appropriate retirement system.

20 (5) A family law order may only provide for payment to an alternate payee as follows:

21 (a) Service retirement benefit payments or withdrawals of member contributions may be
22 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of
23 no more than the amount payable to the participant.

24 (b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate
25 payees is the monthly benefit amount that would have been payable on the date of termination of service
26 if the member had retired without disability or death.

27 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
28 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the
29 same ratio as existing benefit payments.

30 (d) Payments must be limited to the life of the appropriate participant. The duration of payments

1 to an alternate payee may be further limited only to a specified maximum time, the life of the alternate
2 payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific
3 amount per month if the number of payments is specified. The alternate payee's rights and interests
4 survive the alternate payee's death and may be transferred by inheritance.

5 (e) The participant may be required to choose a specified form of benefit payment or designate a
6 beneficiary or contingent annuitant if the retirement system allows for that option.

7 (6) The board may assess a participant or an alternate payee for all costs of reviewing and
8 administering a family law order, including reasonable attorney fees. The board may adopt rules to
9 implement this section.

10
11 **NEW SECTION. Section 10. Rollover or transfer of public employee accumulated contributions.**

12 (1) A member who is eligible to qualify service under this chapter may at any time before retirement apply
13 to roll over or transfer the member's accumulated contributions on deposit with any other qualified
14 retirement plan. The total amount transferred to the retirement system may not exceed the amount due
15 to purchase service.

16 (2) If the account includes both tax-deferred and taxed contributions, the transferring agency shall
17 identify the member's tax-deferred and taxed contribution and interest balances at the time the transfer is
18 made.

19
20 **NEW SECTION. Section 11. Repealer.** Section 19-20-207, MCA, is repealed.

21
22 **NEW SECTION. Section 12. Codification instruction.** (1) [Sections 8 and 9] are intended to be
23 codified as an integral part of Title 19, chapter 20, and the provisions of Title 19, chapter 20, apply to
24 [sections 8 and 9].

25 (2) [Section 10] is intended to be codified as an integral part of Title 19, chapter 20, part 4, and
26 the provisions of Title 19, chapter 20, part 4, apply to [section 10].

27
28 **NEW SECTION. Section 13. Effective dates.** (1) [Sections 1 through 3, 5 through 7, and 9
29 through 12 and this section] are effective on passage and approval.

30 (2) [Sections 4 and 8] are effective July 1, 1995.

-END-