

## 1 HOUSE BILL NO. 134

2 INTRODUCED BY J. JOHNSON

3 BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE  
6 TEACHERS' RETIREMENT SYSTEM; DEFINING "TERMINATION", "TERMINATION PAY", AND "VESTED";  
7 PROVIDING TERMINATION PAY OPTIONS; CLARIFYING THAT TEACHERS' RETIREMENT SYSTEM  
8 PROVISIONS MUST COMPLY WITH FEDERAL TAX LAWS REGARDING QUALIFIED PLAN STATUS;  
9 CLARIFYING THE DISTRIBUTION OF BENEFITS TO BENEFICIARIES; CLARIFYING CERTAIN DEFINITIONS;  
10 CLARIFYING DEFINITIONS RELATED TO COMPENSATION USED TO DETERMINE BENEFITS; CLARIFYING  
11 THAT FAMILY LAW ORDERS AFFECTING DISTRIBUTION OF BENEFITS MAY NOT BE ENTERED UNLESS  
12 APPROVED BY THE TEACHERS' RETIREMENT BOARD; GENERALLY REVISING LANGUAGE REFERRING  
13 TO ANNUITIES; REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE PUBLIC  
14 EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING CERTAIN SERVICE PROVISIONS; CLARIFYING  
15 DISPOSITION OF UNCLAIMED ACCOUNTS; REVISING CERTAIN WITHDRAWAL AND OPTIONAL  
16 ALLOWANCE PROVISIONS; REVISING PAYMENT COMMENCEMENT PROVISIONS; REVISING CERTAIN  
17 DISABILITY RETIREMENT AND REINSTATEMENT FROM DISABILITY PROVISIONS; CLARIFYING  
18 POSTRETIREMENT PROVISIONS; AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-208, 19-20-305,  
19 19-20-409, 19-20-412, 19-20-503, 19-20-602, 19-20-603, 19-20-605, 19-20-702, 19-20-703,  
20 19-20-706, 19-20-711, 19-20-712, 19-20-713, 19-20-715, 19-20-801, 19-20-804, 19-20-902,  
21 19-20-903, 19-20-904, 19-20-905, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING AN  
22 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

23

## 24 STATEMENT OF INTENT

25 A statement of intent is required for this bill because [section 3] gives the teachers' retirement  
26 board authority to adopt administrative rules.

27 The legislature finds that it is beneficial to maintain the teachers' retirement system as a qualified  
28 plan under Internal Revenue Code regulations. Therefore, it is the intent of the legislature that statutory  
29 provisions governing the teachers' retirement system be subject to federal tax law applicable to public  
30 retirement plans. The legislature intends that the board make rules useful and necessary to ensure

1 compliance with federal law and necessary to maintain a federal tax qualified plan status.

2

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

4

5 **NEW SECTION. Section 1. Earned compensation -- part-time service.** The earned compensation  
6 of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time  
7 service during the 5 years preceding the member's retirement is the compensation that the member would  
8 have earned in the final 3 years had the member's part-time service been full-time service. To determine  
9 the compensation that the member would have earned, the compensation reported must be divided by the  
10 part-time service credited to the member's account.

11

12 **NEW SECTION. Section 2. Termination pay.** If a member receives termination pay at the time of  
13 termination and elects to retire at that time, the member shall select one of the following options:

14 (1) The member may use termination pay in the calculation of the member's average final  
15 compensation. The member and the employer shall pay contributions to the retirement system as  
16 determined by the board to adequately compensate the system for the additional retirement benefit. The  
17 contributions must be made at the time of termination.

18 (2) The member may use a yearly amount of termination pay added to each of the 3 consecutive  
19 years' salary used in the calculation of the member's average final compensation. To determine the amount  
20 of termination pay used in the calculation of average final compensation, termination pay must be divided  
21 by the total number of years of creditable service to determine a yearly amount. The member and the  
22 employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602  
23 and 19-20-605(1).

24 (3) The member may exclude the termination pay from the average final compensation. A  
25 contribution is not required of either the member or the employer, and any contributions made under  
26 19-20-602 and 19-20-605 must be refunded.

27

28 **NEW SECTION. Section 3. Retaining qualified plan status -- board rulemaking authority.** If a  
29 provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue  
30 Code applicable to public retirement systems and consequent federal administrative regulations, the

1 provision is either ineffective or must be interpreted to conform to the federal qualification requirements  
2 and allow the system to retain tax-deferred status. The board may adopt rules to implement this section.

3

4 **NEW SECTION. Section 4. Effect of no designation or no surviving beneficiary.** (1) If a beneficiary  
5 is not designated or if no designated beneficiary survives the payment recipient, the estate of the payment  
6 recipient is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not  
7 received prior to the death of the payment recipient. If the estate would not be probated but for the amount  
8 due from the retirement system, all of the amount due must be paid directly, without probate, to the  
9 surviving next of kin of the deceased or to the guardians of the survivor's estate, share and share alike.

10 (2) Payment must be made in the same order in which the following groups are listed:

11 (a) husband or wife;

12 (b) children;

13 (c) father and mother;

14 (d) grandchildren;

15 (e) brothers and sisters; or

16 (f) nieces and nephews.

17 (3) A payment may not be made to a person included in any of the groups listed in subsection (2)  
18 if at the date of payment there is a living person in any of the groups preceding the group of which the  
19 person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon  
20 a form supplied by the system, that there are no living individuals in the groups preceding the group of  
21 which the person is a member and that the estate of the deceased will not be probated.

22 (4) The payment must be in full and complete discharge and acquittance of the board and system  
23 on account of the member's or payment recipient's death.

24

25 **Section 5.** Section 19-20-101, MCA, is amended to read:

26 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,  
27 the following definitions apply:

28 (1) "Accumulated contributions" means the sum of all the amounts deducted from the  
29 compensation of a member or paid by a member and credited to the member's individual account in the  
30 annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a

1 benefit at the time of retirement.

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

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

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

10 (5) ~~(a)~~ "Average final compensation" means the average of the a member's earned compensation  
11 of a member during the 3 consecutive years of full-time service or as provided under [section 1] that yield  
12 the highest average and on which contributions have been made as required by 19-20-602 or 19-20-413.  
13 If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for  
14 all members and have been continuously reported as earned compensation in a like amount for at least the  
15 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of  
16 average final compensation. If amounts defined in subsection (6)(b) have been reported as earned  
17 compensation for less than 5 fiscal years or if the member has been given the option to have amounts  
18 reported as earned compensation, any amounts reported in the 3-year period that constitute average final  
19 compensation must be included in average final compensation as provided under [section 2(2)].

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

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

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

29 (i) ~~use the total termination pay in the calculation of the average final compensation. The member~~  
30 ~~and the employer shall pay contributions to the retirement system as are determined by the board to~~

1 adequately compensate the system for the additional retirement benefit. The contributions must be made  
2 at the time the termination pay is received.

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

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

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

16 (6)(4) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other  
17 benefit provided by the retirement system formally designated by a member, retiree, or benefit recipient to  
18 receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

19 (7)(5) "Creditable service" is that service defined by 19-20-401.

20 (8)(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive  
21 of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an  
22 employer, ~~as defined under this chapter,~~ before any tax-deferred pretax deductions allowed under the  
23 Internal Revenue Code are deducted from the member's compensation, ~~exclusive of maintenance,~~  
24 ~~allowances, and expenses.~~ The earned compensation is remuneration that would have been paid to a  
25 member for full-time service but was not paid to the member because of a reduction in compensation, pay,  
26 or salary due to a temporary absence, provided that the retirement system receives the contribution  
27 required by 19-20-413. The earned compensation of a member who had less than 3 consecutive years of  
28 full-time service during the 5 years preceding the member's retirement is the compensation, pay, or salary  
29 that the member would have earned had the member's part-time service been full-time service. The earned  
30 compensation of a member who is awarded a disability retirement allowance prior to the completion of a

1 ~~full year is the compensation, pay, or salary that the member would have received had the member~~  
 2 ~~completed the full year, except that any termination pay, as defined in subsection (5)(e), received by the~~  
 3 ~~member is limited to the amount actually paid and is not the amount that the member would have earned~~  
 4 ~~had the member completed the full year.~~

5 (b) Earned compensation does not mean:

6 (i) direct employer premium payments on behalf of members for health or dependent care expense  
 7 accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental,  
 8 or any other insurance;

9 (ii) any direct employer payment or reimbursement for professional membership dues; maintenance;  
 10 housing; day care; or automobile, travel, lodging, or entertaining expenses; or any similar payment for any  
 11 form of maintenance, allowance, or expenses;

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

13 (iv) any noncash benefit provided by an employer to or on behalf of an employee.

14 (c) Earned compensation does not include lump-sum payments in respect to unused, accumulated  
 15 sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive  
 16 or severance payment contingent upon the employee terminating employment.

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

19 ~~(9)(7)~~ "Employer" means the state of Montana, the trustees of a district, or any other agency or  
 20 subdivision of the state that employs a person who is designated a member of the retirement system.

21 ~~(10)(8)~~ "Full-time service" means service that is full-time and that extends over a normal academic  
 22 year of at least 9 months. With respect to those members employed by the office of the superintendent  
 23 of public instruction, any other state agency or institution, or the office of a county superintendent, full-time  
 24 service means service that is full-time and that totals at least 9 months in any year.

25 ~~(11)(9)~~ "Member" means a person who has an individual account in the annuity savings fund. An  
 26 active member is a person included under the provisions of 19-20-302. An inactive member is a person  
 27 included under the provisions of 19-20-303.

28 ~~(12)(10)~~ "Part-time service" means service that is less than full-time or that totals less than 9  
 29 months in ~~any~~ a normal academic year. Part-time service must be credited in the proportion that the actual  
 30 time worked ~~bears~~ compares to full-time service.

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

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

5           ~~(15)~~(11) "Prior service" means employment of the same nature as service defined in subsection ~~(20)~~  
6 but rendered before September 1, 1937.

7           ~~(16)~~(12) "Regular interest" means interest at 4% ~~per annum a year~~ compounded annually or at such  
8 ~~other~~ a rate as may be set by the retirement board in accordance with 19-20-501(2).

9           ~~(17)~~(13) "Retirement allowance" means ~~the annuity plus the pension a payment due monthly to a~~  
10 person who has qualified for service or disability retirement or due to a beneficiary as provided in  
11 19-20-1001.

12           ~~(18)~~(14) "Retirement board" or "board" means the retirement system's governing board provided  
13 for in 2-15-1010.

14           ~~(19)~~(15) "Retirement system" or "system" means the teachers' retirement system of the state of  
15 Montana provided for in 19-20-102.

16           ~~(20)~~(16) "Service" means the performance of instructional duties or related activities that would  
17 entitle the person to active membership in the retirement system under the provisions of 19-20-302.

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

21           (18) "Termination pay" means any form of termination pay made at the time of retirement or death;  
22 payments contingent on the employee terminating employment; any lump-sum payment for deferred  
23 compensation, sick leave, or accumulated vacation credit; or any other payment for time not worked other  
24 than compensation received while on sick leave or authorized leave of absence.

25           (19) "Vested" means that a member has been credited with at least 5 full years of membership  
26 service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has  
27 a right to a future retirement benefit."

28

29           **Section 6.** Section 19-20-104, MCA, is amended to read:

30           **"19-20-104. Guarantee by state.** Regular interest charges payable, the creation and maintenance

1 of reserves in the pension accumulation fund, and the maintenance of ~~annuity reserves~~ accumulated  
 2 contributions in the annuity ~~reserve~~ savings fund, as provided for in this chapter, and the payment of all  
 3 ~~annuities, pensions~~ retirement allowances, refunds, and other benefits granted under the retirement system  
 4 are obligations of the state of Montana."

5

6 **Section 7.** Section 19-20-208, MCA, is amended to read:

7 **"19-20-208. Duties of employer.** Each employer shall:

8 (1) pick up the contribution of each employed member ~~employed by him~~ at the rate prescribed by  
 9 19-20-602 and transmit the contribution each month to the ~~secretary~~ executive director of the retirement  
 10 board;

11 (2) ~~pay~~ transmit to the ~~secretary~~ executive director of the retirement board the employer's  
 12 contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted ~~to the~~  
 13 ~~secretary~~;

14 (3) keep records and, as required by the retirement board, furnish information to the board that is  
 15 required in the discharge of the board's duties;

16 (4) upon the employment of a person who is required to become a member of the retirement  
 17 system, inform ~~him~~ the person of ~~his~~ the rights and obligations relating to the retirement system;

18 (5) whenever applicable, inform an employee of ~~his~~ the right to elect to participate in the optional  
 19 retirement program under Title 19, chapter 21;

20 (6) at the request of the retirement board, certify the names of all persons who are eligible for  
 21 membership or who are members of the retirement system; ~~and~~

22 (7) notify the retirement board of the employment of a person eligible for membership and forward  
 23 ~~his~~ the person's membership application to the board;

24 (8) if the employer has converted to earned compensation amounts excluded from earned  
 25 compensation, for each retiring member, certify to the board the amounts reported to the system in each  
 26 of the 5 years preceding the member's retirement."

27

28 **Section 8.** Section 19-20-305, MCA, is amended to read:

29 **"19-20-305. Alternate payees -- family law orders.** (1) A participant in a retirement system may  
 30 have the participant's rights modified or recognized by a family law order.



1 (2) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

1 amount per month if the number of payments is specified. The alternate payee's rights and interests survive  
2 the alternate payee's death and may be transferred by inheritance.

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

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

8 (7) A court may not enter a family law order relating to payments by the system unless terms of  
9 the proposed order have been approved by the board."

10

11 **Section 9.** Section 19-20-409, MCA, is amended to read:

12 **"19-20-409. Transfer of service credits and contributions from public employees' retirement**  
13 **system.** (1) An active member may at any time before retirement make a written election with the  
14 retirement board to qualify in the teachers' retirement system all of the member's previous creditable  
15 service in the public employees' retirement system. The amount that must be paid to the retirement system  
16 to qualify this service under this section is the sum of subsections (2) and (3).

17 (2) ~~In addition to the amounts directly paid or transferred by the member under subsection (3), the~~  
18 The public employees' retirement system shall transfer to the teachers' retirement system an amount equal  
19 to 72% of the amount payable by the member.

20 (3) The member shall pay either directly or by transferring contributions on account with the public  
21 employees' retirement system an amount equal to the member's accumulated contributions at the time that  
22 active membership was terminated, plus accrued interest. Interest must be calculated from the date of  
23 termination until payment is received by the retirement system, based on the interest tables in use by the  
24 public employees' retirement system.

25 (4) A member who qualifies service from the public employees' retirement system in the teachers'  
26 retirement system must complete 5 years of membership service in the teachers' retirement system to  
27 qualify or purchase military service, out-of-state teaching service, employment while on leave, and private  
28 school employment.

29 (5) The retirement board shall determine the service credits that may be transferred.

30 (6) If an active member who also has creditable service in the public employees' retirement system

1 before becoming a member of the teachers' retirement system dies before qualifying this service in the  
 2 teachers' retirement system and if the member's service credits from both systems, when combined, entitle  
 3 the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers'  
 4 retirement system. Before payment of the death benefit, the public employees' retirement board must  
 5 transfer to the teachers' retirement system the contributions necessary to qualify this service in the  
 6 teachers' retirement system as provided in subsections (2) and (3).

7 (7) If the retirement board determines that an individual's membership was erroneously classified  
 8 and reported to the public employees' retirement system, the member's accumulated contributions and  
 9 service, together with employer contributions plus interest, must be transferred to the teachers' retirement  
 10 system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605,  
 11 respectively, are the liability of the employee and the employing entity where the error occurred,  
 12 respectively. For the period of time that the employer contributions are held by the public employees'  
 13 retirement system, interest paid on employer contributions transferred under this subsection must be  
 14 calculated at the short-term investment pool rate earned by the board of investments in the fiscal year  
 15 preceding the transfer request."

16

17 **Section 10.** Section 19-20-412, MCA, is amended to read:

18 "**19-20-412. Election to purchase additional service.** (1) (a) Except as provided in subsection (3),  
 19 a member with 5 years or more of creditable service may make a written election with the retirement board  
 20 to purchase, for the purpose of calculating the member's retirement allowance, 1 year of additional service  
 21 for:

22 (i) each 5 years of service on which contributions have been made as required under the provisions  
 23 of 19-20-602; and

24 (ii) each 5 years of membership service as defined in Title 19, chapter 3, for which contributions  
 25 have been made as required under the provisions of 19-20-409.

26 (b) A maximum of 5 years of additional service may be purchased under this section. A part-time  
 27 member may purchase additional service on a prorated basis.

28 (2) (a) To purchase additional service under this section, a member shall contribute, in a lump-sum  
 29 payment or in installments as agreed upon by the member and the retirement board, an amount equal to:

30 (i) the combined employer and employee rate on July 1, 1989, or the combined rate in effect at

1 the time the member is eligible to purchase the service, whichever date is later, multiplied by the member's  
2 earned compensation for full-time service as provided in subsection (2)(b); and

3 (ii) interest at a rate of 8% compounded annually from July 1, 1989, or from the date at which the  
4 member is eligible to purchase the service, whichever date is later.

5 (b) The earned compensation used in calculating the cost of purchasing additional service under  
6 this section is:

7 (i) for the first year of service purchased, the member's earned compensation for full-time service  
8 for the 1988-89 school year or for the member's fifth year of service, whichever year is later;

9 (ii) for the second year of service purchased, the member's earned compensation for full-time  
10 service for the 1988-89 school year or for the member's 10th year of service, whichever year is later;

11 (iii) for the third year of service purchased, the member's earned compensation for full-time service  
12 for the 1988-89 school year or for the member's 15th year of service, whichever year is later;

13 (iv) for the fourth year of service purchased, the member's earned compensation for full-time  
14 service for the 1988-89 school year or for the member's 20th year of service, whichever year is later; and

15 (v) for the fifth year of service purchased, the member's earned compensation for full-time service  
16 for the 1988-89 school year or for the member's 25th year of service, whichever year is later.

17 (3) A member who became a member prior to July 1, 1989, and who is eligible to purchase  
18 creditable service under 19-3-504, 19-3-510, 19-3-512, 19-3-513, 19-20-402, 19-20-403, 19-20-408,  
19 19-20-410, or 19-20-411 may not purchase additional service under this section unless the member elects  
20 in writing to:

21 (a) waive eligibility to purchase creditable service under sections referred to in subsection (3); and

22 (b) apply the accumulated contributions made under sections referred to in subsection (3) to the  
23 cost of additional service purchased under this section.

24 (4) Additional service purchased under this section may not be used to qualify a member for service  
25 retirement."

26

27 **Section 11.** Section 19-20-503, MCA, is amended to read:

28 **"19-20-503. Transfer of dormant ~~savings account~~ or unclaimed accounts.** (1) The retirement board  
29 may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the  
30 pension accumulation fund if the account has been dormant for a period of 7 years. ~~No~~ A right of the

1 member may not be jeopardized by ~~such~~ the transfer, and the amount ~~shall~~ must be transferred back to the  
 2 member's annuity savings account upon ~~his~~ the member's request.

3 (2) Retirement benefits must be claimed within 5 years of the date of the member's death. If the  
 4 named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member's  
 5 account balance reverts to the pension trust fund."

6

7 **Section 12.** Section 19-20-602, MCA, is amended to read:

8 **"19-20-602. Annuity savings fund -- member's contribution.** The annuity savings fund is a fund  
 9 in which the contributions for the members to provide for their ~~annuities~~ retirement allowance or benefits  
 10 must be accumulated in individual accounts for each member. The normal contribution of each member is  
 11 7.044% of the member's earned compensation. Contributions to and payments from the annuity savings  
 12 fund must be made in the following manner:

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

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

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

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

30 (2) In addition to the normal contributions and subject to the approval of the retirement board, a

1 member may redeposit in the annuity savings fund, by a single payment or by an increased rate of  
 2 contribution, an amount equal to accumulated contributions that the member has previously withdrawn,  
 3 plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

4 (3) The accumulated contributions of a member withdrawn by the member or paid to the member's  
 5 estate or to the member's designated beneficiary in event of the member's death must be paid from the  
 6 annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be  
 7 transferred from the annuity savings fund to the pension accumulation fund."

8

9 **Section 13.** Section 19-20-603, MCA, is amended to read:

10 **"19-20-603. Withdrawal of accumulated contributions -- options.** ~~Any~~ An inactive member electing  
 11 to do so or ~~any~~ a person whose membership terminates without a prospect or anticipation that the member  
 12 will return to work for an employer within 60 days of termination may withdraw the member's ~~or person's~~  
 13 accumulated contributions from the annuity ~~account~~ savings fund in the retirement system in accordance  
 14 with the following provisions:

15 (1) An inactive member under the provisions of ~~subsection (1) or (3) of 19-20-303(1) or (3)~~ (1) or (3) may  
 16 elect, without right of revocation, to withdraw the member's accumulated contributions. If the member  
 17 does not withdraw the accumulated contributions, the member remains an inactive member of the  
 18 retirement system with the right to qualify for its benefits.

19 (2) Upon recovery from a disabling illness or separation from the armed forces, ~~any~~ a person  
 20 qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's  
 21 accumulated contributions unless the member returns to active membership.

22 (3) ~~Any~~ A person whose membership terminates under the provisions of 19-20-304(4) may  
 23 withdraw the person's accumulated contributions.

24 (4) Upon written request, a terminating member may have the payment of ~~the~~ all or any portion  
 25 of the member's accumulated contributions ~~split. The tax-deferred portion of the contributions may be paid~~  
 26 ~~directly to an individual retirement account or other~~ rolled over or transferred into another qualified plan  
 27 designated by the member, ~~and the other.~~ The portion not rolled over or transferred must be paid directly  
 28 to the terminating member. The board shall provide forms for making the written request. The terminating  
 29 member is responsible for correctly designating an account or plan eligible to receive the tax-deferred  
 30 amount in order to continue the tax-deferred status of the amount."

1           **Section 14.** Section 19-20-605, MCA, is amended to read:

2           "**19-20-605. Pension accumulation fund -- employer's contribution.** The pension accumulation fund  
3 is the fund in which the reserves for payment of ~~pensions and annuities~~ retirement allowances and benefits  
4 must be accumulated and from which ~~pensions, annuities,~~ retirement allowances and benefits must be paid  
5 to ~~or on account of beneficiaries credited with prior service~~ retirees or their beneficiaries. Contributions to  
6 and payments from the pension accumulation fund must be made as follows:

7           (1) Each employer shall pay into the pension accumulation fund an amount equal to 7.47% of the  
8 earned compensation of each member employed during the whole or part of the preceding payroll period.

9           (2) If the employer is a district or community college district, the trustees shall budget and pay for  
10 the employer's contribution under the provisions of 20-9-501.

11           (3) If the employer is the superintendent of public instruction, a public institution of the state of  
12 Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the  
13 legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's  
14 contribution.

15           (4) If the employer is a county, the county commissioners shall budget and pay for the employer's  
16 contribution in the manner provided by law for the adoption of a county budget and for payments under  
17 the budget.

18           (5) All interest and other earnings realized on the money of the retirement system ~~shall~~ must be  
19 credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity  
20 savings fund ~~shall~~ must be transferred to that fund from the pension accumulation fund.

21           (6) ~~All pensions, annuities, and benefits must be paid from the pension accumulation fund.~~

22           ~~(7)~~ The retirement board may, in its discretion, transfer from the pension accumulation fund an  
23 amount necessary to cover expenses of administration."  
24

25           **Section 15.** Section 19-20-702, MCA, is amended to read:

26           "**19-20-702. Optional allowances.** (1) Until the first payment on account of any benefit becomes  
27 normally due, any member may elect to receive one of the optional allowances described in subsection (2)  
28 in lieu of the normal form of retirement allowance, which is provided for in ~~part 8 of this chapter and~~  
29 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's  
30 election to receive an optional allowance is void and the member's death will be considered as that of an

1 active member.

2 (2) An optional allowance is the actuarial equivalent of the member's service retirement or disability  
3 retirement allowance at the time of the member's retirement effective date and provides an allowance  
4 payable to the member throughout the member's lifetime and, upon the member's death, an allowance  
5 payable to the person that the member nominated by written designation, duly acknowledged and filed with  
6 the retirement board at the time of the member's retirement, in accordance with one of the following  
7 options:

8 (a) Option A--the optional allowance will be paid to the member throughout the member's lifetime  
9 and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

10 (b) Option B--the optional allowance will be paid to the member throughout the member's lifetime,  
11 and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime  
12 of the member's designated beneficiary.

13 (c) Option C--the optional allowance will be paid to the member throughout the member's lifetime,  
14 and upon the member's death, two-thirds of the optional allowance will be continued throughout the  
15 lifetime of the member's designated beneficiary.

16 (d) ~~Option D--some other benefit will be paid either to the member or the member's surviving~~  
17 ~~designated beneficiary in accordance with provisions approved by the retirement board~~ Period certain and  
18 life--a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever  
19 is greater.

20 (i) The member shall elect one of the following certain time periods:

21 (A) 10 years if the member is 75 years of age or younger at the time of retirement; or

22 (B) 20 years if the member is 65 years of age or younger at the time of retirement.

23 (ii) At the time of retirement, the member shall file with the board a written nomination of  
24 beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless  
25 limited by a family law order, the nominated beneficiary may be changed by the member at any time by  
26 filing with the board a written notice designating different beneficiaries.

27 (3) (a) Upon written request to the retirement board, a retired member whose effective date of  
28 retirement is before October 1, 1993, and who is receiving an optional retirement allowance may designate  
29 a different beneficiary, select a different option, or convert the member's optional retirement allowance to  
30 a regular retirement or disability allowance if:



1 (i) the original beneficiary has died; or

2 (ii) the member has been divorced from the original beneficiary and the original beneficiary has not  
3 been granted the right to receive the optional retirement allowance as part of the divorce settlement.

4 (b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement  
5 or disability allowance to reflect the change.

6 (4) Effective on the first of the month following ~~receipt of notification of~~ the death of a person  
7 nominated as the designated beneficiary under subsection ~~(2)~~ (2)(a), (2)(b), or (2)(c), any optional retirement  
8 allowance that is effective after October 1, 1993, will revert to the full normal form of retirement allowance  
9 available at the time of retirement. The normal form of retirement allowance available must be increased  
10 by the value of any postretirement adjustments received by the member since the effective date of  
11 retirement. The retired member may, within 180 days of the death of the designated beneficiary, file a  
12 written application with the board to designate a different beneficiary and to select an actuarially equivalent  
13 optional allowance. The optional allowance is effective on the first day of the month following receipt of  
14 the retiree's application."

15

16 **Section 16.** Section 19-20-703, MCA, is amended to read:

17 "**19-20-703. Payments to be monthly.** (1) All pensions and annuities shall retirement allowances  
18 must be paid in equal monthly installments.

19 (2) The retirement allowance may commence:

20 (a) no earlier than the first day of the month following the member's termination date or on the first  
21 day of the month following the date when the member first becomes eligible, whichever date is later; or

22 (b) if requested by the inactive member in writing:

23 (i) on the first day of a later month; or

24 (ii) on the first day of the month following the member's 60th birthday."

25

26 **Section 17.** Section 19-20-706, MCA, is amended to read:

27 "**19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305, the  
28 ~~pensions, annuities, retirement allowances~~ or any other benefits accrued or accruing to any person under  
29 the provisions of the retirement system and the accumulated contributions and cash and securities in the  
30 various funds of the retirement system are:

- 1 (1) exempted from any state, county, or municipal tax of the state of Montana except for:
- 2 (a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined
- 3 pursuant to 15-30-111(2)(c)(ii); or
- 4 (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after
- 5 June 30, 1985, as provided in 19-20-602;
- 6 (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or
- 7 equity, or any other process; and
- 8 (3) unassignable except as specifically provided in this chapter."

9

10 **Section 18.** Section 19-20-711, MCA, is amended to read:

11 **"19-20-711. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a

12 ~~member~~ retiree or beneficiary is eligible to receive a postretirement adjustment as provided in 19-20-713

13 if ~~he~~ the retiree is receiving a:

- 14 (a) service retirement allowance ~~and is 55 years of age or older on or before June 30 in the year~~
- 15 ~~that the postretirement adjustment is made;~~ or
- 16 (b) disability or survivorship allowance.

17 (2) A ~~member~~ retiree or beneficiary is ineligible to receive a postretirement adjustment under

18 subsection (1) unless ~~he~~ the retiree or beneficiary has been receiving a monthly service, disability, or

19 survivorship allowance for at least 24 consecutive months on or before June 30 in the year that the

20 adjustment is made."

21

22 **Section 19.** Section 19-20-712, MCA, is amended to read:

23 **"19-20-712. Funding for postretirement adjustment -- reserve fund.** (1) At the end of each fiscal

24 year, the board shall determine the total investment income ~~earned~~ minus unrealized gains or losses on the

25 retirement fund for that fiscal year. From this amount, the board shall subtract the:

- 26 (a) ~~actuarial amount required to fund the retirement system for the fiscal year~~ amount equivalent
- 27 to the actuarially required investment yield; and
- 28 (b) retirement system's administrative and investment expenses for the fiscal year.

29 (2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of

30 investment income earned on that portion of the retirement fund balance representing retired members.

1 (b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

2 (3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use  
3 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment  
4 to eligible ~~members~~ retirees or beneficiaries under 19-20-713.

5 (4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement  
6 adjustment of at least \$1 under 19-20-713, an adjustment may not be made in that calendar year.

7 (5) The amount available for payment of the postretirement allowance is limited to an amount that  
8 would provide a percentage increase in the average service, disability, or survivorship allowance of all  
9 eligible ~~members~~ retirees, when combined with the postretirement adjustment, that is equal to or less than  
10 the percentage increase for the previous calendar year in the annual average consumer price index for urban  
11 wage earners and workers compiled by the bureau of labor statistics, United States department of labor,  
12 or its successor agency."

13  
14 **Section 20.** Section 19-20-713, MCA, is amended to read:

15 **"19-20-713. Payment and amount of postretirement adjustment.** (1) Effective January 1 of each  
16 year that funds are available under 19-20-712, a ~~member~~ retiree or beneficiary eligible under 19-20-711  
17 shall receive a postretirement adjustment in the form of a monthly benefit payable for life.

18 (2) The board shall calculate the amount of the postretirement allowance payable to an eligible  
19 ~~member~~ retiree or beneficiary by:

20 (a) dividing the amount available under 19-20-712(3) for payment of the postretirement allowance  
21 by the total accumulated years of service for all eligible ~~members~~ retirees and beneficiaries;

22 (b) multiplying the quotient obtained in subsection (2)(a) by the ~~member's~~ retiree's total years of  
23 service;

24 (c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly ~~annuity~~  
25 retirement allowance from actuarial tables adopted by the board; and

26 (d) applying the provisions contained in subsections (3) and (4).

27 (3) If a ~~member~~ retiree had elected to receive an optional retirement allowance, the amount of ~~his~~  
28 the retiree's postretirement allowance must be adjusted by the appropriate optional factor.

29 (4) If more than one beneficiary is receiving a ~~member's~~ retiree's retirement allowance, the  
30 postretirement adjustment must be divided in the same manner as the ~~member's~~ retiree's retirement

1 allowance."

2

3 **Section 21.** Section 19-20-715, MCA, is amended to read:

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

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

14 (3) Earned compensation in excess of the amount specified in subsection (2) is considered  
15 termination pay and must be included in the calculation of average final compensation as provided in  
16 [section 2]. "

17

18 **Section 22.** Section 19-20-801, MCA, is amended to read:

19 **"19-20-801. Eligibility for ~~superannuation~~ service retirement.** A member who has at least 5 full  
20 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained  
21 the age of 60 or has been credited with full-time or part-time service in 25 or more years may retire from  
22 service if ~~he~~ the member has terminated employment in all positions from which the member is eligible to  
23 retire and files with the retirement board ~~his~~ a written application setting forth the fact of ~~his~~ the member's  
24 retirement."

25

26 **Section 23.** Section 19-20-804, MCA, is amended to read:

27 **"19-20-804. Allowance for ~~superannuation~~ service retirement.** (1) Upon ~~superannuation~~  
28 ~~retirement, a~~ termination, an eligible member ~~shall~~ must receive a retirement allowance ~~consisting of a~~  
29 ~~pension which, together with an annuity, provides a retirement allowance~~ equal to one-sixtieth of ~~his~~ the  
30 member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of

1 years of creditable service, service transferred under 19-20-409, and additional service purchased under  
2 19-20-412.

3 (2) ~~Any~~ Except as provided in subsection (3), a retired member may be employed as a part-time  
4 or substitute teacher in Montana and may earn, without loss of retirement benefits, an amount not to  
5 exceed the greater of:

6 (a) one-third of the sum of ~~his~~ the member's average final compensation plus normal annual salary  
7 increases for teaching personnel employed by the school district, state agency, political subdivision, or  
8 university unit that employed the member at the time of retirement; or

9 (b) one-third of the median of the average final compensation for members retired during the  
10 preceding fiscal year as determined by the retirement board.

11 (3) If an early-retired member under 19-20-802 is reemployed with the same employer within 30  
12 days from the member's effective date of retirement or if the early-retired member is guaranteed  
13 reemployment with the same employer, the member must be considered to have continued in the status  
14 of an active member and not to have separated from service. Any retirement allowance payments received  
15 by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and  
16 the retirement allowance must be terminated."  
17

18 **Section 24.** Section 19-20-902, MCA, is amended to read:

19 "19-20-902. **Allowance for disability retirement.** (1) Upon retirement for disability, a member must  
20 receive a disability retirement allowance equal to the greater of:

21 ~~(a)~~ (a) one-sixtieth of the member's average final compensation multiplied by the sum of the number  
22 of years of creditable service, service transferred under 19-20-409, and additional service purchased under  
23 19-20-412, ~~if the retirement allowance exceeds one-fourth of the member's average final compensation;~~  
24 or

25 ~~(b)~~ (b) ~~a pension that, together with the member's annuity, provides a total retirement allowance~~  
26 ~~equal to~~ one-fourth of the member's average final compensation.

27 (2) The earned compensation in the year of termination that is included in the calculation of average  
28 final compensation of a member who is awarded a disability retirement allowance prior to the completion  
29 of a full year is the compensation, pay, or salary that the member would have received under the member's  
30 contract had the member completed the full year. Any termination pay received by the member is limited

1 to the amount actually paid and is not the amount that the member would have earned had the member  
 2 completed the full year."

3

4 **Section 25.** Section 19-20-903, MCA, is amended to read:

5 **"19-20-903. Medical examination of disability retiree.** (1) Once each year during the first 5 years  
 6 following the retirement of a member on a disability retirement allowance and once in every 3-year period  
 7 thereafter, the retirement board may require ~~and, upon the beneficiary's application, shall permit~~ a disability  
 8 ~~beneficiary~~ benefit recipient who has not yet attained the age of 60 to undergo a medical examination by  
 9 a physician or physicians designated by the retirement board. The examination ~~shall~~ must be made at the  
 10 place of residence of the ~~beneficiary~~ benefit recipient or other place mutually agreed upon. Based on the  
 11 examination, the board shall determine whether the disabled member is unable, by reason of physical or  
 12 mental incapacity, to perform the essential elements of the position held by the member when the member  
 13 retired. If the board determines that the member is not incapacitated, the member's retirement benefit must  
 14 be canceled. If the member disagrees with the board's determination, the member may request the board  
 15 to reconsider its action. The request for reconsideration must be made in writing within 60 days after the  
 16 receipt of the notice of the status change.

17 (2) A member whose disability retirement benefit is canceled because the board has determined  
 18 that the member is no longer incapacitated must be given preference by the member's former employer for  
 19 the position held at the time of retirement or for a comparable position that becomes available within 1 year  
 20 of cancellation of the disability retirement. The member may agree to accept an offer of employment by an  
 21 employer. Employment in any capacity by an employer terminates any right granted by this section. The  
 22 fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty  
 23 that the former employee may have or claim to have. This section does not affect any requirement for the  
 24 former employee to meet or to be able to meet professional certification and licensing standards unrelated  
 25 to the previous disability, otherwise necessary for reinstatement to duty.

26 ~~(2)(3) Should~~ If a disability ~~beneficiary~~ benefit recipient who has not yet attained the age of 60  
 27 ~~refuse~~ refuses to submit to a medical examination as required in subsection (1), ~~his~~ the recipient's  
 28 allowance may be discontinued until ~~his~~ withdrawal of ~~such~~ the refusal, ~~and should his,~~ If a refusal  
 29 ~~continue~~ continues for 1 year, all ~~his~~ rights in and to ~~his~~ a disability pension may be revoked by the  
 30 retirement board."

1           **Section 26.** Section 19-20-904, MCA, is amended to read:

2           "**19-20-904. Adjustment of allowance.** ~~(1) If~~ (1) (a) Except as provided by subsection (1)(b), if  
 3 a retiree receiving a disability beneficiary retirement allowance is engaged in or is able to engage in a gainful  
 4 occupation paying more than the difference between the ~~beneficiary's~~ retiree's retirement allowance and  
 5 the ~~beneficiary's~~ retiree's average final compensation or the difference between the median salary of those  
 6 members retired during the preceding fiscal year and the ~~beneficiary's~~ retiree's retirement allowance,  
 7 whichever is greater, the retirement allowance must be reduced to an amount that, together with the  
 8 amount earnable by the ~~beneficiary~~ retiree, is equal to the ~~beneficiary's~~ retiree's average final compensation  
 9 or the median salary of those members retired during the preceding fiscal year, whichever is greater.

10           (b) If a disabled retiree is reemployed with the same employer within 30 days from the member's  
 11 effective date of retirement or if the retired member is guaranteed reemployment with the same employer,  
 12 the member must be considered to have continued in the status of an active member and not to have  
 13 separated from service. Any retirement allowance payments received by the member must be repaid to  
 14 the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be  
 15 terminated.

16           (2) If the ~~beneficiary's~~ disabled retiree's earning capacity is changed later, the ~~beneficiary's~~  
 17 retirement allowance may be further modified, but the new allowance may not exceed the retirement  
 18 allowance originally granted or an amount that, when added to the amount earnable by the ~~beneficiary~~  
 19 retiree, equals the ~~beneficiary's~~ retiree's average final compensation.

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

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

26

27           **Section 27.** Section 19-20-905, MCA, is amended to read:

28           "**19-20-905. Cancellation of allowance and restoration of membership.** (1) ~~If a disability beneficiary~~  
 29 ~~under age 60 is restored to active service at a compensation not less than his average final compensation,~~  
 30 his disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements

1 of active membership, as provided under 19-20-302, the retiree's retirement allowance shall must cease  
 2 and he. If the retiree is employed by an employer covered under this chapter, the retiree shall again become  
 3 an active member of the retirement system. Any prior service certificate on the basis of which his the  
 4 member's service was computed at the time of his the member's disability retirement shall must be restored  
 5 to full force, and upon his the member's subsequent retirement, he shall the member must be credited with  
 6 such the prior service and all his subsequent service as a member.

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

15

16 **Section 28.** Section 19-20-1001, MCA, is amended to read:

17 "**19-20-1001. Allowances for death of member.** (1) If a member dies before retirement, ~~his the~~  
 18 member's accumulated contributions shall must be paid to his the member's estate or such to a person as  
 19 he the member may have nominated by a written designation in a manner prescribed by the board and filed  
 20 with the retirement board prior to his the member's death in the manner prescribed by the board.

21 (2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason  
 22 of service for a retirement benefit, the nominated beneficiary ~~nominated by the deceased member~~ may elect  
 23 to receive a monthly life annuity retirement allowance. The monthly life annuity shall retirement allowance  
 24 must be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, in the same  
 25 manner as if the member elected option A provided for in 19-20-702(2)(a).

26 (b) In the event that ~~that~~ payments made to ~~an annuitant~~ a recipient do not equal the amount of the  
 27 member's accumulated contributions ~~prior to~~ before the ~~annuitant's~~ member's death, the difference  
 28 between the total ~~annuity~~ retirement allowance payments made and the amount of the accumulated  
 29 contributions ~~shall~~ at the time of the member's death must be paid to the beneficiary.

30 (3) If the deceased member had 5 or more years of creditable service and was an active member



1 in the state of Montana within 1 year ~~prior to his~~ before the member's death, a lump-sum death benefit of  
 2 \$500 is payable to ~~his~~ the member's designated beneficiary.

3 (4) If a deceased member had 5 or more years of creditable service and was an active member in  
 4 the state of Montana within 1 year prior to ~~his~~ the member's death, the sum of \$200 ~~per a month shall~~  
 5 must be paid to each minor child of the deceased member until ~~such~~ the child reaches ~~his 18th birthday~~  
 6 18 years of age."

7

8 **Section 29.** Section 19-20-1002, MCA, is amended to read:

9 **"19-20-1002. Payments upon death of retiree.** (1) In the event of the death of a member after  
 10 retirement, a death benefit of \$500 is payable to ~~his~~ the designated beneficiary.

11 (2) In the event that payments made to ~~an annuitant~~ a benefit recipient do not equal the amount  
 12 of the member's accumulated contributions ~~prior to~~ before the annuitant's death member's retirement, the  
 13 difference between the total retirement allowance paid and the amount of the accumulated contributions  
 14 ~~shall~~ must be paid to the beneficiary.

15 (3) If a deceased member had 5 or more years of creditable service and was retired at the time of  
 16 ~~his~~ death, the sum of \$200 ~~per a month shall~~ must be paid to each minor child of the deceased ~~member~~  
 17 retiree until ~~such~~ the child reaches ~~his 18th birthday~~ 18 years of age."

18

19 **NEW SECTION. Section 30. Codification instruction.** (1) [Section 1] is intended to be codified as  
 20 an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to  
 21 [section 1].

22 (2) [Sections 2 and 4] are intended to be codified as an integral part of Title 19, chapter 20, part  
 23 7, and the provisions of Title 19, chapter 20, part 7, apply to [sections 2 and 4].

24 (3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 20, part 1, and the  
 25 provisions of Title 19, chapter 20, part 1, apply to [section 3].

26

27 **NEW SECTION. Section 31. Coordination instruction.** If \_\_\_ Bill No. \_\_\_ [LC 0553] is passed and  
 28 approved and if it includes sections that amend 19-20-711 through 19-20-713, then [sections 18 through  
 29 20 of this act], amending 19-20-711 through 19-20-713, are void.

30

1            **NEW SECTION. Section 32. Retroactive applicability.** [Section 9] applies retroactively, within the  
2 meaning of 1-2-109, to all occurrences on or after January 1, 1995.

3

4            **NEW SECTION. Section 33. Effective date.** [This act] is effective on passage and approval.

5

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0134, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

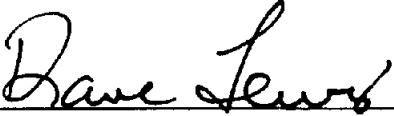
A bill that generally revises the laws relating to the Teachers' Retirement system.

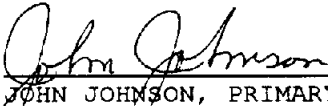
ASSUMPTIONS:

1. HB 134 clarifies certain laws relating to the Teachers' Retirement System benefits provisions and does not enhance benefits. Therefore, there is no increased actuarial or administrative costs.
2. Provisions of the bill that relate to withdrawals and payment of retirement benefits are required to maintain the system's tax qualified status.

FISCAL IMPACT:

Passage of HB 134 will have no fiscal impact on the state.

 1-11-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1/8/97  
JOHN JOHNSON, PRIMARY SPONSOR      DATE  
Fiscal Note for HB0134, as introduced

**HB 134**

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## HOUSE BILL NO. 134

INTRODUCED BY J. JOHNSON, HARRINGTON, SQUIRES, HERTEL, BARTLETT, LYNCH, CHRISTIAENS  
BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE  
TEACHERS' RETIREMENT SYSTEM; DEFINING "TERMINATION", "TERMINATION PAY", AND "VESTED";  
PROVIDING TERMINATION PAY OPTIONS; CLARIFYING THAT TEACHERS' RETIREMENT SYSTEM  
PROVISIONS MUST COMPLY WITH FEDERAL TAX LAWS REGARDING QUALIFIED PLAN STATUS;  
CLARIFYING THE DISTRIBUTION OF BENEFITS TO BENEFICIARIES; CLARIFYING CERTAIN DEFINITIONS;  
CLARIFYING DEFINITIONS RELATED TO COMPENSATION USED TO DETERMINE BENEFITS; CLARIFYING  
THAT FAMILY LAW ORDERS AFFECTING DISTRIBUTION OF BENEFITS MAY NOT BE ENTERED UNLESS  
APPROVED BY THE TEACHERS' RETIREMENT BOARD; GENERALLY REVISING LANGUAGE REFERRING  
TO ANNUITIES; REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING CERTAIN SERVICE PROVISIONS; CLARIFYING  
DISPOSITION OF UNCLAIMED ACCOUNTS; REVISING CERTAIN WITHDRAWAL AND OPTIONAL  
ALLOWANCE PROVISIONS; REVISING PAYMENT COMMENCEMENT PROVISIONS; REVISING CERTAIN  
DISABILITY RETIREMENT AND REINSTATEMENT FROM DISABILITY PROVISIONS; CLARIFYING  
POSTRETIREMENT PROVISIONS; AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-208, 19-20-305,  
19-20-409, 19-20-412, 19-20-503, 19-20-602, 19-20-603, 19-20-605, 19-20-702, 19-20-703,  
19-20-706, 19-20-711, 19-20-712, 19-20-713, 19-20-715, 19-20-801, 19-20-804, 19-20-902,  
19-20-903, 19-20-904, 19-20-905, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING AN  
IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] gives the teachers' retirement  
board authority to adopt administrative rules.

The legislature finds that it is beneficial to maintain the teachers' retirement system as a qualified  
plan under Internal Revenue Code regulations. Therefore, it is the intent of the legislature that statutory  
provisions governing the teachers' retirement system be subject to federal tax law applicable to public  
retirement plans. The legislature intends that the board make rules useful and necessary to ensure

1 compliance with federal law and necessary to maintain a federal tax qualified plan status.

2

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

4

5 NEW SECTION. **Section 1. Earned compensation -- part-time service.** The earned compensation  
6 of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time  
7 service during the 5 years preceding the member's retirement is the compensation that the member would  
8 have earned in the final 3 years had the member's part-time service been full-time service. To determine  
9 the compensation that the member would have earned, the compensation reported must be divided by the  
10 part-time service credited to the member's account.

11

12 NEW SECTION. **Section 2. Termination pay.** If a member receives termination pay at the time of  
13 termination and elects to retire at that time, the member shall select one of the following options:

14 (1) The member may use termination pay in the calculation of the member's average final  
15 compensation. The member and the employer shall pay contributions to the retirement system as  
16 determined by the board to adequately compensate the system for the additional retirement benefit. The  
17 contributions must be made at the time of termination.

18 (2) The member may use a yearly amount of termination pay added to each of the 3 consecutive  
19 years' salary used in the calculation of the member's average final compensation. To determine the amount  
20 of termination pay used in the calculation of average final compensation, termination pay must be divided  
21 by the total number of years of creditable service to determine a yearly amount. The member and the  
22 employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602  
23 and 19-20-605(1).

24 (3) The member may exclude the termination pay from the average final compensation. A  
25 contribution is not required of either the member or the employer, and any contributions made under  
26 19-20-602 and 19-20-605 must be refunded.

27

28 NEW SECTION. **Section 3. Retaining qualified plan status -- board rulemaking authority.** If a  
29 provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue  
30 Code applicable to public retirement systems and consequent federal administrative regulations, the

1 provision is either ineffective or must be interpreted to conform to the federal qualification requirements  
2 and allow the system to retain tax-deferred status. The board may adopt rules to implement this section.

3

4 **NEW SECTION. Section 4. Effect of no designation or no surviving beneficiary.** (1) If a beneficiary  
5 is not designated or if no designated beneficiary survives the payment recipient, the estate of the payment  
6 recipient is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not  
7 received prior to the death of the payment recipient. If the estate would not be probated but for the amount  
8 due from the retirement system, all of the amount due must be paid directly, without probate, to the  
9 surviving next of kin of the deceased or to the guardians of the survivor's estate, share and share alike.

10 (2) Payment must be made in the same order in which the following groups are listed:

11 (a) husband or wife;

12 (b) children;

13 (c) father and mother;

14 (d) grandchildren;

15 (e) brothers and sisters; or

16 (f) nieces and nephews.

17 (3) A payment may not be made to a person included in any of the groups listed in subsection (2)  
18 if at the date of payment there is a living person in any of the groups preceding the group of which the  
19 person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon  
20 a form supplied by the system, that there are no living individuals in the groups preceding the group of  
21 which the person is a member and that the estate of the deceased will not be probated.

22 (4) The payment must be in full and complete discharge and acquittance of the board and system  
23 on account of the member's or payment recipient's death.

24

25 **Section 5.** Section 19-20-101, MCA, is amended to read:

26 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,  
27 the following definitions apply:

28 (1) "Accumulated contributions" means the sum of all the amounts deducted from the  
29 compensation of a member or paid by a member and credited to the member's individual account in the  
30 annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a

1 benefit at the time of retirement.

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

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

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

10 (5) ~~(a)~~ "Average final compensation" means the average of the a member's earned compensation  
11 of a member during the 3 consecutive years of full-time service or as provided under [section 1] that yield  
12 the highest average and on which contributions have been made as required by 19-20-602 or 19-20-413.  
13 If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for  
14 all members and have been continuously reported as earned compensation in a like amount for at least the  
15 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of  
16 average final compensation. If amounts defined in subsection (6)(b) have been reported as earned  
17 compensation for less than 5 fiscal years or if the member has been given the option to have amounts  
18 reported as earned compensation, any amounts reported in the 3-year period that constitute average final  
19 compensation must be included in average final compensation as provided under [section 2(2)].

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

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

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

29 (i) ~~use the total termination pay in the calculation of the average final compensation. The member~~  
30 ~~and the employer shall pay contributions to the retirement system as are determined by the board to~~

1 adequately compensate the system for the additional retirement benefit. The contributions must be made  
2 at the time the termination pay is received.

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

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

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

16 (6)(4) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other  
17 benefit provided by the retirement system formally designated by a member, retiree, or benefit recipient to  
18 receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

19 (7)(5) "Creditable service" is that service defined by 19-20-401.

20 (8)(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive  
21 of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an  
22 employer, ~~as defined under this chapter,~~ before any tax-deferred pretax deductions allowed under the  
23 Internal Revenue Code are deducted from the member's compensation, ~~exclusive of maintenance,~~  
24 ~~allowances, and expenses.~~ The earned compensation is remuneration that would have been paid to a  
25 member for full-time service but was not paid to the member because of a reduction in compensation, pay,  
26 or salary due to a temporary absence, provided that the retirement system receives the contribution  
27 required by 19-20-413. The earned compensation of a member who had less than 3 consecutive years of  
28 full-time service during the 5 years preceding the member's retirement is the compensation, pay, or salary  
29 that the member would have earned had the member's part-time service been full-time service. The earned  
30 compensation of a member who is awarded a disability retirement allowance prior to the completion of a



1 full year is the compensation, pay, or salary that the member would have received had the member  
 2 completed the full year, except that any termination pay, as defined in subsection (5)(c), received by the  
 3 member is limited to the amount actually paid and is not the amount that the member would have earned  
 4 had the member completed the full year.

5 (b) Earned compensation does not mean:

6 (i) direct employer premium payments on behalf of members for health or dependent care expense  
 7 accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental,  
 8 or any other insurance;

9 (ii) any direct employer payment or reimbursement for professional membership dues; maintenance;  
 10 housing; day care; or automobile, travel, lodging, or entertaining expenses; or any similar payment for any  
 11 form of maintenance, allowance, or expenses;

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

13 (iv) any noncash benefit provided by an employer to or on behalf of an employee.

14 (c) Earned compensation does not include lump-sum payments in respect to unused, accumulated  
 15 sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive  
 16 or severance payment contingent upon the employee terminating employment.

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

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

21 ~~(8)~~ "Full-time service" means service that is full-time and that extends over a normal academic  
 22 year of at least 9 months. With respect to those members employed by the office of the superintendent  
 23 of public instruction, any other state agency or institution, or the office of a county superintendent, full-time  
 24 service means service that is full-time and that totals at least 9 months in any year.

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

28 ~~(10)~~ "Part-time service" means service that is less than full-time or that totals less than 9  
 29 months in ~~any~~ a normal academic year. Part-time service must be credited in the proportion that the actual  
 30 time worked ~~bears~~ compares to full-time service.

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

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

5 ~~(15)~~(11) "Prior service" means employment of the same nature as service defined in subsection ~~(20)~~  
6 but rendered before September 1, 1937.

7 ~~(16)~~(12) "Regular interest" means interest at 4% ~~per annum a year~~ compounded annually or at such  
8 ~~other~~ a rate as may be set by the retirement board in accordance with 19-20-501(2).

9 ~~(17)~~(13) "Retirement allowance" means ~~the annuity plus the pension~~ a payment due monthly to a  
10 person who has qualified for service or disability retirement or due to a beneficiary as provided in  
11 19-20-1001.

12 ~~(18)~~(14) "Retirement board" or "board" means the retirement system's governing board provided  
13 for in 2-15-1010.

14 ~~(19)~~(15) "Retirement system" or "system" means the teachers' retirement system of the state of  
15 Montana provided for in 19-20-102.

16 ~~(20)~~(16) "Service" means the performance of instructional duties or related activities that would  
17 entitle the person to active membership in the retirement system under the provisions of 19-20-302.

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

21 (18) "Termination pay" means any form of termination pay made at the time of retirement or death;  
22 payments contingent on the employee terminating employment; any lump-sum payment for deferred  
23 compensation, sick leave, or accumulated vacation credit; or any other payment for time not worked other  
24 than compensation received while on sick leave or authorized leave of absence.

25 (19) "Vested" means that a member has been credited with at least 5 full years of membership  
26 service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has  
27 a right to a future retirement benefit."

28  
29 **Section 6.** Section 19-20-104, MCA, is amended to read:

30 **"19-20-104. Guarantee by state.** Regular interest charges payable, the creation and maintenance

1 of reserves in the pension accumulation fund, and the maintenance of ~~annuity reserves~~ accumulated  
 2 contributions in the annuity ~~reserve~~ savings fund, as provided for in this chapter, and the payment of all  
 3 ~~annuities, pensions~~ retirement allowances, refunds, and other benefits granted under the retirement system  
 4 are obligations of the state of Montana."

5  
 6 **Section 7.** Section 19-20-208, MCA, is amended to read:

7 "**19-20-208. Duties of employer.** Each employer shall:

8 (1) pick up the contribution of each employed member ~~employed by him~~ at the rate prescribed by  
 9 19-20-602 and transmit the contribution each month to the ~~secretary~~ executive director of the retirement  
 10 board;

11 (2) ~~pay~~ transmit to the ~~secretary~~ executive director of the retirement board the employer's  
 12 contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted ~~to the~~  
 13 ~~secretary~~;

14 (3) keep records and, as required by the retirement board, furnish information to the board that is  
 15 required in the discharge of the board's duties;

16 (4) upon the employment of a person who is required to become a member of the retirement  
 17 system, inform ~~him~~ the person of ~~his~~ the rights and obligations relating to the retirement system;

18 (5) whenever applicable, inform an employee of ~~his~~ the right to elect to participate in the optional  
 19 retirement program under Title 19, chapter 21;

20 (6) at the request of the retirement board, certify the names of all persons who are eligible for  
 21 membership or who are members of the retirement system; ~~and~~

22 (7) notify the retirement board of the employment of a person eligible for membership and forward  
 23 ~~his~~ the person's membership application to the board;

24 (8) if the employer has converted to earned compensation amounts excluded from earned  
 25 compensation, for each retiring member, certify to the board the amounts reported to the system in each  
 26 of the 5 years preceding the member's retirement."

27  
 28 **Section 8.** Section 19-20-305, MCA, is amended to read:

29 "**19-20-305. Alternate payees -- family law orders.** (1) A participant in a retirement system may  
 30 have the participant's rights modified or recognized by a family law order.

1 (2) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

1 amount per month if the number of payments is specified. The alternate payee's rights and interests survive  
2 the alternate payee's death and may be transferred by inheritance.

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

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

8 (7) A court may not enter a family law order relating to payments by the system unless terms of  
9 the proposed order have been approved by the board."

10

11 **Section 9.** Section 19-20-409, MCA, is amended to read:

12 **"19-20-409. Transfer of service credits and contributions from public employees' retirement**  
13 **system.** (1) An active member may at any time before retirement make a written election with the  
14 retirement board to qualify in the teachers' retirement system all of the member's previous creditable  
15 service in the public employees' retirement system. The amount that must be paid to the retirement system  
16 to qualify this service under this section is the sum of subsections (2) and (3).

17 (2) ~~In addition to the amounts directly paid or transferred by the member under subsection (3), the~~  
18 The public employees' retirement system shall transfer to the teachers' retirement system an amount equal  
19 to 72% of the amount payable by the member.

20 (3) The member shall pay either directly or by transferring contributions on account with the public  
21 employees' retirement system an amount equal to the member's accumulated contributions at the time that  
22 active membership was terminated, plus accrued interest. Interest must be calculated from the date of  
23 termination until payment is received by the retirement system, based on the interest tables in use by the  
24 public employees' retirement system.

25 (4) A member who qualifies service from the public employees' retirement system in the teachers'  
26 retirement system must complete 5 years of membership service in the teachers' retirement system to  
27 qualify or purchase military service, out-of-state teaching service, employment while on leave, and private  
28 school employment.

29 (5) The retirement board shall determine the service credits that may be transferred.

30 (6) If an active member who also has creditable service in the public employees' retirement system

1 before becoming a member of the teachers' retirement system dies before qualifying this service in the  
 2 teachers' retirement system and if the member's service credits from both systems, when combined, entitle  
 3 the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers'  
 4 retirement system. Before payment of the death benefit, the public employees' retirement board must  
 5 transfer to the teachers' retirement system the contributions necessary to qualify this service in the  
 6 teachers' retirement system as provided in subsections (2) and (3).

7 (7) If the retirement board determines that an individual's membership was erroneously classified  
 8 and reported to the public employees' retirement system, the member's accumulated contributions and  
 9 service, together with employer contributions plus interest, must be transferred to the teachers' retirement  
 10 system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605,  
 11 respectively, are the liability of the employee and the employing entity where the error occurred,  
 12 respectively. For the period of time that the employer contributions are held by the public employees'  
 13 retirement system, interest paid on employer contributions transferred under this subsection must be  
 14 calculated at the short-term investment pool rate earned by the board of investments in the fiscal year  
 15 preceding the transfer request."

16  
 17 **Section 10.** Section 19-20-412, MCA, is amended to read:

18 **"19-20-412. Election to purchase additional service.** (1) (a) Except as provided in subsection (3),  
 19 a member with 5 years or more of creditable service may make a written election with the retirement board  
 20 to purchase, for the purpose of calculating the member's retirement allowance, 1 year of additional service  
 21 for:

22 (i) each 5 years of service on which contributions have been made as required under the provisions  
 23 of 19-20-602; and

24 (ii) each 5 years of membership service as defined in Title 19, chapter 3, for which contributions  
 25 have been made as required under the provisions of 19-20-409.

26 (b) A maximum of 5 years of additional service may be purchased under this section. A part-time  
 27 member may purchase additional service on a prorated basis.

28 (2) (a) To purchase additional service under this section, a member shall contribute, in a lump-sum  
 29 payment or in installments as agreed upon by the member and the retirement board, an amount equal to:

30 (i) the combined employer and employee rate on July 1, 1989, or the combined rate in effect at

1 the time the member is eligible to purchase the service, whichever date is later, multiplied by the member's  
2 earned compensation for full-time service as provided in subsection (2)(b); and

3 (ii) interest at a rate of 8% compounded annually from July 1, 1989, or from the date at which the  
4 member is eligible to purchase the service, whichever date is later.

5 (b) The earned compensation used in calculating the cost of purchasing additional service under  
6 this section is:

7 (i) for the first year of service purchased, the member's earned compensation for full-time service  
8 for the 1988-89 school year or for the member's fifth year of service, whichever year is later;

9 (ii) for the second year of service purchased, the member's earned compensation for full-time  
10 service for the 1988-89 school year or for the member's 10th year of service, whichever year is later;

11 (iii) for the third year of service purchased, the member's earned compensation for full-time service  
12 for the 1988-89 school year or for the member's 15th year of service, whichever year is later;

13 (iv) for the fourth year of service purchased, the member's earned compensation for full-time  
14 service for the 1988-89 school year or for the member's 20th year of service, whichever year is later; and

15 (v) for the fifth year of service purchased, the member's earned compensation for full-time service  
16 for the 1988-89 school year or for the member's 25th year of service, whichever year is later.

17 (3) A member who became a member prior to July 1, 1989, and who is eligible to purchase  
18 creditable service under 19-3-504, 19-3-510, 19-3-512, 19-3-513, 19-20-402, 19-20-403, 19-20-408,  
19 19-20-410, or 19-20-411 may not purchase additional service under this section unless the member elects  
20 in writing to:

21 (a) waive eligibility to purchase creditable service under sections referred to in subsection (3); and

22 (b) apply the accumulated contributions made under sections referred to in subsection (3) to the  
23 cost of additional service purchased under this section.

24 (4) Additional service purchased under this section may not be used to qualify a member for service  
25 retirement."

26

27 **Section 11.** Section 19-20-503, MCA, is amended to read:

28 "**19-20-503. Transfer of dormant ~~savings account~~ or unclaimed accounts.** (1) The retirement board  
29 may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the  
30 pension accumulation fund if the account has been dormant for a period of 7 years. ~~No~~ A right of the

1 member may not be jeopardized by ~~such~~ the transfer, and the amount ~~shall~~ must be transferred back to the  
2 member's annuity savings account upon ~~his~~ the member's request.

3 (2) Retirement benefits must be claimed within 5 years of the date of the member's death. If the  
4 named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member's  
5 account balance reverts to the pension trust fund."

6

7 **Section 12.** Section 19-20-602, MCA, is amended to read:

8 **"19-20-602. Annuity savings fund -- member's contribution.** The annuity savings fund is a fund  
9 in which the contributions for the members to provide for their ~~annuities~~ retirement allowance or benefits  
10 must be accumulated in individual accounts for each member. The normal contribution of each member is  
11 7.044% of the member's earned compensation. Contributions to and payments from the annuity savings  
12 fund must be made in the following manner:

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

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

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

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

30 (2) In addition to the normal contributions and subject to the approval of the retirement board, a



1 member may redeposit in the annuity savings fund, by a single payment or by an increased rate of  
2 contribution, an amount equal to accumulated contributions that the member has previously withdrawn,  
3 plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

4 (3) The accumulated contributions of a member withdrawn by the member or paid to the member's  
5 estate or to the member's designated beneficiary in event of the member's death must be paid from the  
6 annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be  
7 transferred from the annuity savings fund to the pension accumulation fund."

8  
9 **Section 13.** Section 19-20-603, MCA, is amended to read:

10 **"19-20-603. Withdrawal of accumulated contributions -- options.** ~~Any~~ An inactive member electing  
11 to do so or ~~any~~ a person whose membership terminates without a prospect or anticipation that the member  
12 will return to work for an employer within 60 days of termination may withdraw the member's ~~or person's~~  
13 accumulated contributions from the annuity ~~account~~ savings fund in the retirement system in accordance  
14 with the following provisions:

15 (1) An inactive member under the provisions of ~~subsection (1) or (3) of 19-20-303(1) or (3)~~ may  
16 elect, without right of revocation, to withdraw the member's accumulated contributions. If the member  
17 does not withdraw the accumulated contributions, the member remains an inactive member of the  
18 retirement system with the right to qualify for its benefits.

19 (2) Upon recovery from a disabling illness or separation from the armed forces, ~~any~~ a person  
20 qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's  
21 accumulated contributions unless the member returns to active membership.

22 (3) ~~Any~~ A person whose membership terminates under the provisions of 19-20-304(4) may  
23 withdraw the person's accumulated contributions.

24 (4) Upon written request, a terminating member may have the payment of ~~the~~ all or any portion  
25 of the member's accumulated contributions ~~split. The tax-deferred portion of the contributions may be paid~~  
26 ~~directly to an individual retirement account or other~~ rolled over or transferred into another qualified plan  
27 designated by the member, ~~and the other.~~ The portion not rolled over or transferred must be paid directly  
28 to the terminating member. The board shall provide forms for making the written request. The terminating  
29 member is responsible for correctly designating an account or plan eligible to receive the tax-deferred  
30 amount in order to continue the tax-deferred status of the amount."

1           **Section 14.** Section 19-20-605, MCA, is amended to read:

2           "**19-20-605. Pension accumulation fund -- employer's contribution.** The pension accumulation fund  
3 is the fund in which the reserves for payment of ~~pensions and annuities~~ retirement allowances and benefits  
4 must be accumulated and from which ~~pensions, annuities, retirement allowances~~ and benefits must be paid  
5 to ~~or on account of beneficiaries credited with prior service~~ retirees or their beneficiaries. Contributions to  
6 and payments from the pension accumulation fund must be made as follows:

7           (1) Each employer shall pay into the pension accumulation fund an amount equal to 7.47% of the  
8 earned compensation of each member employed during the whole or part of the preceding payroll period.

9           (2) If the employer is a district or community college district, the trustees shall budget and pay for  
10 the employer's contribution under the provisions of 20-9-501.

11           (3) If the employer is the superintendent of public instruction, a public institution of the state of  
12 Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the  
13 legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's  
14 contribution.

15           (4) If the employer is a county, the county commissioners shall budget and pay for the employer's  
16 contribution in the manner provided by law for the adoption of a county budget and for payments under  
17 the budget.

18           (5) All interest and other earnings realized on the money of the retirement system ~~shall~~ must be  
19 credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity  
20 savings fund ~~shall~~ must be transferred to that fund from the pension accumulation fund.

21           (6) ~~All pensions, annuities, and benefits must be paid from the pension accumulation fund.~~

22           ~~(7)~~ The retirement board may, in its discretion, transfer from the pension accumulation fund an  
23 amount necessary to cover expenses of administration."  
24

25           **Section 15.** Section 19-20-702, MCA, is amended to read:

26           "**19-20-702. Optional allowances.** (1) Until the first payment on account of any benefit becomes  
27 normally due, any member may elect to receive one of the optional allowances described in subsection (2)  
28 in lieu of the normal form of retirement allowance, which is provided for in ~~part 8 of this chapter and~~  
29 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's  
30 election to receive an optional allowance is void and the member's death will be considered as that of an

1 active member.

2 (2) An optional allowance is the actuarial equivalent of the member's service retirement or disability  
3 retirement allowance at the time of the member's retirement effective date and provides an allowance  
4 payable to the member throughout the member's lifetime and, upon the member's death, an allowance  
5 payable to the person that the member nominated by written designation, duly acknowledged and filed with  
6 the retirement board at the time of the member's retirement, in accordance with one of the following  
7 options:

8 (a) Option A--the optional allowance will be paid to the member throughout the member's lifetime  
9 and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

10 (b) Option B--the optional allowance will be paid to the member throughout the member's lifetime,  
11 and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime  
12 of the member's designated beneficiary.

13 (c) Option C--the optional allowance will be paid to the member throughout the member's lifetime,  
14 and upon the member's death, two-thirds of the optional allowance will be continued throughout the  
15 lifetime of the member's designated beneficiary.

16 (d) ~~Option D--some other benefit will be paid either to the member or the member's surviving~~  
17 ~~designated beneficiary in accordance with provisions approved by the retirement board~~ Period certain and  
18 life--a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever  
19 is greater.

20 (i) The member shall elect one of the following certain time periods:

21 (A) 10 years if the member is 75 years of age or younger at the time of retirement; or

22 (B) 20 years if the member is 65 years of age or younger at the time of retirement.

23 (ii) At the time of retirement, the member shall file with the board a written nomination of  
24 beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless  
25 limited by a family law order, the nominated beneficiary may be changed by the member at any time by  
26 filing with the board a written notice designating different beneficiaries.

27 (3) (a) Upon written request to the retirement board, a retired member whose effective date of  
28 retirement is before October 1, 1993, and who is receiving an optional retirement allowance may designate  
29 a different beneficiary, select a different option, or convert the member's optional retirement allowance to  
30 a regular retirement or disability allowance if:

1 (i) the original beneficiary has died; or

2 (ii) the member has been divorced from the original beneficiary and the original beneficiary has not  
3 been granted the right to receive the optional retirement allowance as part of the divorce settlement.

4 (b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement  
5 or disability allowance to reflect the change.

6 (4) Effective on the first of the month following ~~receipt of notification of~~ the death of a person  
7 nominated as the designated beneficiary under subsection ~~(2)~~ (2)(a), (2)(b), or (2)(c), any optional retirement  
8 allowance that is effective after October 1, 1993, will revert to the full normal form of retirement allowance  
9 available at the time of retirement. The normal form of retirement allowance available must be increased  
10 by the value of any postretirement adjustments received by the member since the effective date of  
11 retirement. The retired member may, within 180 days 18 MONTHS of the death of the designated  
12 beneficiary, file a written application with the board to designate a different beneficiary and to select an  
13 actuarially equivalent optional allowance. The optional allowance is effective on the first day of the month  
14 following receipt of the retiree's application."

15

16 **Section 16.** Section 19-20-703, MCA, is amended to read:

17 **"19-20-703. Payments to be monthly.** (1) All pensions and annuities shall retirement allowances  
18 must be paid in equal monthly installments.

19 (2) The retirement allowance may commence:

20 (a) no earlier than the first day of the month following the member's termination date or on the first  
21 day of the month following the date when the member first becomes eligible, whichever date is later; or

22 (b) if requested by the inactive member in writing:

23 (i) on the first day of a later month; or

24 (ii) on the first day of the month following the member's 60th birthday."

25

26 **Section 17.** Section 19-20-706, MCA, is amended to read:

27 **"19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305, the  
28 ~~pensions, annuities, retirement allowances~~ or any other benefits accrued or accruing to any person under  
29 the provisions of the retirement system and the accumulated contributions and cash and securities in the  
30 various funds of the retirement system are:

- 1 (1) exempted from any state, county, or municipal tax of the state of Montana except for:
- 2 (a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined
- 3 pursuant to 15-30-111(2)(c)(iii); or
- 4 (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after
- 5 June 30, 1985, as provided in 19-20-602;
- 6 (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or
- 7 equity, or any other process; and
- 8 (3) unassignable except as specifically provided in this chapter."

9

10 **Section 18.** Section 19-20-711, MCA, is amended to read:

11 **"19-20-711. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a  
12 ~~member~~ retiree or beneficiary is eligible to receive a postretirement adjustment as provided in 19-20-713  
13 if ~~he~~ the retiree is receiving a:

- 14 (a) service retirement allowance ~~and is 55 years of age or older on or before June 30 in the year~~
- 15 ~~that the postretirement adjustment is made;~~ or
- 16 (b) disability or survivorship allowance.

17 (2) A ~~member~~ retiree or beneficiary is ineligible to receive a postretirement adjustment under  
18 subsection (1) unless ~~he~~ the retiree or beneficiary has been receiving a monthly service, disability, or  
19 survivorship allowance for at least 24 consecutive months on or before June 30 in the year that the  
20 adjustment is made."

21

22 **Section 19.** Section 19-20-712, MCA, is amended to read:

23 **"19-20-712. Funding for postretirement adjustment -- reserve fund.** (1) At the end of each fiscal  
24 year, the board shall determine the total investment income ~~earned~~ minus unrealized gains or losses on the  
25 retirement fund for that fiscal year. From this amount, the board shall subtract the:

- 26 (a) ~~actuarial amount required to fund the retirement system for the fiscal year~~ amount equivalent
- 27 to the actuarially required investment yield; and
- 28 (b) retirement system's administrative and investment expenses for the fiscal year.

29 (2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of  
30 investment income earned on that portion of the retirement fund balance representing retired members.

1 (b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

2 (3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use  
3 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment  
4 to eligible ~~members~~ retirees or beneficiaries under 19-20-713.

5 (4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement  
6 adjustment of at least \$1 under 19-20-713, an adjustment may not be made in that calendar year.

7 (5) The amount available for payment of the postretirement allowance is limited to an amount that  
8 would provide a percentage increase in the average service, disability, or survivorship allowance of all  
9 eligible ~~members~~ retirees, when combined with the postretirement adjustment, that is equal to or less than  
10 the percentage increase for the previous calendar year in the annual average consumer price index for urban  
11 wage earners and workers compiled by the bureau of labor statistics, United States department of labor,  
12 or its successor agency."

13

14 **Section 20.** Section 19-20-713, MCA, is amended to read:

15 **"19-20-713. Payment and amount of postretirement adjustment.** (1) Effective January 1 of each  
16 year that funds are available under 19-20-712, a ~~member~~ retiree or beneficiary eligible under 19-20-711  
17 shall receive a postretirement adjustment in the form of a monthly benefit payable for life.

18 (2) The board shall calculate the amount of the postretirement allowance payable to an eligible  
19 ~~member~~ retiree or beneficiary by:

20 (a) dividing the amount available under 19-20-712(3) for payment of the postretirement allowance  
21 by the total accumulated years of service for all eligible ~~members~~ retirees and beneficiaries;

22 (b) multiplying the quotient obtained in subsection (2)(a) by the ~~member's~~ retiree's total years of  
23 service;

24 (c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly ~~annuity~~  
25 retirement allowance from actuarial tables adopted by the board; and

26 (d) applying the provisions contained in subsections (3) and (4).

27 (3) If a ~~member~~ retiree had elected to receive an optional retirement allowance, the amount of ~~his~~  
28 the retiree's postretirement allowance must be adjusted by the appropriate optional factor.

29 (4) If more than one beneficiary is receiving a ~~member's~~ retiree's retirement allowance, the  
30 postretirement adjustment must be divided in the same manner as the ~~member's~~ retiree's retirement

1 allowance."

2

3 **Section 21.** Section 19-20-715, MCA, is amended to read:

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

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

14 (3) Earned compensation in excess of the amount specified in subsection (2) is considered  
15 termination pay and must be included in the calculation of average final compensation as provided in  
16 [section 2]. "

17

18 **Section 22.** Section 19-20-801, MCA, is amended to read:

19 **"19-20-801. Eligibility for ~~superannuation~~ service retirement.** A member who has at least 5 full  
20 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained  
21 the age of 60 or has been credited with full-time or part-time service in 25 or more years may retire from  
22 service if ~~he~~ the member has terminated employment in all positions from which the member is eligible to  
23 retire and files with the retirement board ~~his~~ a written application setting forth the fact of ~~his~~ the member's  
24 retirement."

25

26 **Section 23.** Section 19-20-804, MCA, is amended to read:

27 **"19-20-804. Allowance for ~~superannuation~~ service retirement.** (1) Upon ~~superannuation~~  
28 ~~retirement, a termination, an eligible~~ member ~~shall~~ must receive a retirement allowance ~~consisting of a~~  
29 ~~pension which, together with an annuity, provides a retirement allowance~~ equal to one-sixtieth of ~~his~~ the  
30 member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of

1 years of creditable service, service transferred under 19-20-409, and additional service purchased under  
2 19-20-412.

3 (2) ~~Any~~ Except as provided in subsection (3), a retired member may be employed as a part-time  
4 or substitute teacher in Montana and may earn, without loss of retirement benefits, an amount not to  
5 exceed the greater of:

6 (a) one-third of the sum of ~~his~~ the member's average final compensation plus normal annual salary  
7 increases for teaching personnel employed by the school district, state agency, political subdivision, or  
8 university unit that employed the member at the time of retirement; or

9 (b) one-third of the median of the average final compensation for members retired during the  
10 preceding fiscal year as determined by the retirement board.

11 (3) If an early-retired member under 19-20-802 is reemployed with the same employer within 30  
12 days from the member's effective date of retirement or if the early-retired member is guaranteed  
13 reemployment with the same employer, the member must be considered to have continued in the status  
14 of an active member and not to have separated from service. Any retirement allowance payments received  
15 by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and  
16 the retirement allowance must be terminated."

17

18 **Section 24.** Section 19-20-902, MCA, is amended to read:

19 "19-20-902. **Allowance for disability retirement.** (1) Upon retirement for disability, a member must  
20 receive a disability retirement allowance equal to the greater of:

21 ~~(1)(a)~~ (a) one-sixtieth of the member's average final compensation multiplied by the sum of the number  
22 of years of creditable service, service transferred under 19-20-409, and additional service purchased under  
23 19-20-412, ~~if the retirement allowance exceeds one-fourth of the member's average final compensation;~~  
24 or

25 ~~(2)(b)~~ (b) a pension that, ~~together with the member's annuity, provides a total retirement allowance~~  
26 ~~equal to~~ one-fourth of the member's average final compensation.

27 (2) The earned compensation in the year of termination that is included in the calculation of average  
28 final compensation of a member who is awarded a disability retirement allowance prior to the completion  
29 of a full year is the compensation, pay, or salary that the member would have received under the member's  
30 contract had the member completed the full year. Any termination pay received by the member is limited



1 to the amount actually paid and is not the amount that the member would have earned had the member  
 2 completed the full year."

3  
 4 **Section 25.** Section 19-20-903, MCA, is amended to read:

5 **"19-20-903. Medical examination of disability retiree.** (1) Once each year during the first 5 years  
 6 following the retirement of a member on a disability retirement allowance and once in every 3-year period  
 7 thereafter, the retirement board may require ~~and, upon the beneficiary's application, shall permit~~ a disability  
 8 ~~beneficiary benefit recipient~~ who has not yet attained the age of 60 to undergo a medical examination by  
 9 a physician or physicians designated by the retirement board. The examination ~~shall~~ must be made at the  
 10 place of residence of the ~~beneficiary benefit recipient~~ or other place mutually agreed upon. Based on the  
 11 examination, the board shall determine whether the disabled member is unable, by reason of physical or  
 12 mental incapacity, to perform the essential elements of the position held by the member when the member  
 13 retired. If the board determines that the member is not incapacitated, the member's retirement benefit must  
 14 be canceled. If the member disagrees with the board's determination, the member may request the board  
 15 to reconsider its action. The request for reconsideration must be made in writing within 60 days after the  
 16 receipt of the notice of the status change.

17 (2) A member whose disability retirement benefit is canceled because the board has determined  
 18 that the member is no longer incapacitated must be given preference by the member's former employer for  
 19 the position held at the time of retirement or for a comparable position that becomes available within 1 year  
 20 of cancellation of the disability retirement. The member may agree to accept an offer of employment by an  
 21 employer. Employment in any capacity by an employer terminates any right granted by this section. The  
 22 fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty  
 23 that the former employee may have or claim to have. This section does not affect any requirement for the  
 24 former employee to meet or to be able to meet professional certification and licensing standards unrelated  
 25 to the previous disability, otherwise necessary for reinstatement to duty.

26 ~~(2)(3) Should~~ If a disability ~~beneficiary benefit recipient~~ who has not yet attained the age of 60  
 27 ~~refuse~~ refuses to submit to a medical examination as required in subsection (1), ~~his~~ the recipient's  
 28 allowance may be discontinued until ~~his~~ his withdrawal of ~~such~~ the refusal, ~~and should his~~ his. If a refusal  
 29 ~~continue~~ continues for 1 year, all ~~his~~ his rights in and to ~~his~~ a disability pension may be revoked by the  
 30 retirement board."

1           **Section 26.** Section 19-20-904, MCA, is amended to read:

2           "**19-20-904. Adjustment of allowance.** ~~(1) If~~ (1) (a) Except as provided by subsection (1)(b), if  
 3 a retiree receiving a disability beneficiary retirement allowance is engaged in or is able to engage in a gainful  
 4 occupation paying more than the difference between the ~~beneficiary's~~ retiree's retirement allowance and  
 5 the ~~beneficiary's~~ retiree's average final compensation or the difference between the median salary of those  
 6 members retired during the preceding fiscal year and the ~~beneficiary's~~ retiree's retirement allowance,  
 7 whichever is greater, the retirement allowance must be reduced to an amount that, together with the  
 8 amount earnable by the ~~beneficiary~~ retiree, is equal to the ~~beneficiary's~~ retiree's average final compensation  
 9 or the median salary of those members retired during the preceding fiscal year, whichever is greater.

10           (b) If a disabled retiree is reemployed with the same employer within 30 days from the member's  
 11 effective date of retirement or if the retired member is guaranteed reemployment with the same employer,  
 12 the member must be considered to have continued in the status of an active member and not to have  
 13 separated from service. Any retirement allowance payments received by the member must be repaid to  
 14 the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be  
 15 terminated.

16           (2) If the ~~beneficiary's~~ disabled retiree's earning capacity is changed later, the ~~beneficiary's~~  
 17 retirement allowance may be further modified, but the new allowance may not exceed the retirement  
 18 allowance originally granted or an amount that, when added to the amount earnable by the ~~beneficiary~~  
 19 retiree, equals the ~~beneficiary's~~ retiree's average final compensation.

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

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

26

27           **Section 27.** Section 19-20-905, MCA, is amended to read:

28           "**19-20-905. Cancellation of allowance and restoration of membership.** (1) ~~If a disability beneficiary~~  
 29 ~~under age 60 is restored to active service at a compensation not less than his average final compensation,~~  
 30 his disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements

1 ~~of active membership, as provided under 19-20-302, the retiree's~~ retirement allowance ~~shall~~ must cease  
 2 ~~and he.~~ If the retiree is employed by an employer covered under this chapter, the retiree shall again become  
 3 an active member of the retirement system. Any prior service certificate on the basis of which ~~his~~ the  
 4 member's service was computed at the time of ~~his~~ the member's disability retirement ~~shall~~ must be restored  
 5 to full force, and upon ~~his~~ the member's subsequent retirement, ~~he shall~~ the member must be credited with  
 6 ~~such~~ the prior service and all ~~his~~ subsequent service as a member.

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

15

16 **Section 28.** Section 19-20-1001, MCA, is amended to read:

17 "**19-20-1001. Allowances for death of member.** (1) If a member dies before retirement, ~~his~~ the  
 18 member's accumulated contributions ~~shall~~ must be paid to ~~his~~ the member's estate or ~~such~~ to a person as  
 19 ~~he~~ the member may have nominated by a written designation in a manner prescribed by the board and filed  
 20 with the retirement board prior to ~~his~~ the member's death ~~in the manner prescribed by the board.~~

21 (2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason  
 22 of service for a retirement benefit, the nominated beneficiary ~~nominated by the deceased member~~ may elect  
 23 to receive a ~~monthly life annuity~~ retirement allowance. The ~~monthly life annuity shall~~ retirement allowance  
 24 must be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, in the same  
 25 manner as if the member elected option A provided for in 19-20-702(2)(a).

26 (b) In the event that payments made to ~~an annuitant~~ a recipient do not equal the amount of the  
 27 member's accumulated contributions ~~prior to~~ before the ~~annuitant's~~ member's death, the difference  
 28 between the total ~~annuity~~ retirement allowance payments made and the amount of the accumulated  
 29 contributions ~~shall~~ at the time of the member's death must be paid to the beneficiary.

30 (3) If the deceased member had 5 or more years of creditable service and was an active member

1 in the state of Montana within 1 year ~~prior to his~~ before the member's death, a lump-sum death benefit of  
 2 \$500 is payable to ~~his~~ the member's designated beneficiary.

3 (4) If a deceased member had 5 or more years of creditable service and was an active member in  
 4 the state of Montana within 1 year prior to ~~his~~ the member's death, the sum of \$200 ~~per a month shall~~  
 5 must be paid to each minor child of the deceased member until ~~such~~ the child reaches his 18th birthday  
 6 18 years of age."

7

8 **Section 29.** Section 19-20-1002, MCA, is amended to read:

9 **"19-20-1002. Payments upon death of retiree.** (1) In the event of the death of a member after  
 10 retirement, a death benefit of \$500 is payable to ~~his~~ the designated beneficiary.

11 (2) In the event that payments made to ~~an annuitant~~ a benefit recipient do not equal the amount  
 12 of the member's accumulated contributions ~~prior to~~ before the annuitant's death member's retirement, the  
 13 difference between the total retirement allowance paid and the amount of the accumulated contributions  
 14 ~~shall~~ must be paid to the beneficiary.

15 (3) If a deceased member had 5 or more years of creditable service and was retired at the time of  
 16 ~~his~~ death, the sum of \$200 ~~per a month shall~~ must be paid to each minor child of the deceased ~~member~~  
 17 retiree until ~~such~~ the child reaches his 18th birthday 18 years of age."

18

19 **NEW SECTION. Section 30. Codification instruction.** (1) [Section 1] is intended to be codified as  
 20 an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to  
 21 [section 1].

22 (2) [Sections 2 and 4] are intended to be codified as an integral part of Title 19, chapter 20, part  
 23 7, and the provisions of Title 19, chapter 20, part 7, apply to [sections 2 and 4].

24 (3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 20, part 1, and the  
 25 provisions of Title 19, chapter 20, part 1, apply to [section 3].

26

27 **NEW SECTION. Section 31. Coordination instruction.** If \_\_\_ Bill No. \_\_\_ [LC 0553] is passed and  
 28 approved and if it includes sections that amend 19-20-711 through 19-20-713, then [sections 18 through  
 29 20 of this act], amending 19-20-711 through 19-20-713, are void.

30

1            **NEW SECTION. Section 32. Retroactive applicability.** [Section 9] applies retroactively, within the  
2 meaning of 1-2-109, to all occurrences on or after January 1, 1995.

3

4            **NEW SECTION. Section 33. Effective date.** [This act] is effective on passage and approval.

5

-END-

## 1 HOUSE BILL NO. 134

2 INTRODUCED BY J. JOHNSON, HARRINGTON, SQUIRES, HERTEL, BARTLETT, LYNCH, CHRISTIAENS  
3 BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE  
6 TEACHERS' RETIREMENT SYSTEM; DEFINING "TERMINATION", "TERMINATION PAY", AND "VESTED";  
7 PROVIDING TERMINATION PAY OPTIONS; CLARIFYING THAT TEACHERS' RETIREMENT SYSTEM  
8 PROVISIONS MUST COMPLY WITH FEDERAL TAX LAWS REGARDING QUALIFIED PLAN STATUS;  
9 CLARIFYING THE DISTRIBUTION OF BENEFITS TO BENEFICIARIES; CLARIFYING CERTAIN DEFINITIONS;  
10 CLARIFYING DEFINITIONS RELATED TO COMPENSATION USED TO DETERMINE BENEFITS; CLARIFYING  
11 THAT FAMILY LAW ORDERS AFFECTING DISTRIBUTION OF BENEFITS MAY NOT BE ENTERED UNLESS  
12 APPROVED BY THE TEACHERS' RETIREMENT BOARD; GENERALLY REVISING LANGUAGE REFERRING  
13 TO ANNUITIES; REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE PUBLIC  
14 EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING CERTAIN SERVICE PROVISIONS; CLARIFYING  
15 DISPOSITION OF UNCLAIMED ACCOUNTS; REVISING CERTAIN WITHDRAWAL AND OPTIONAL  
16 ALLOWANCE PROVISIONS; REVISING PAYMENT COMMENCEMENT PROVISIONS; REVISING CERTAIN  
17 DISABILITY RETIREMENT AND REINSTATEMENT FROM DISABILITY PROVISIONS; CLARIFYING  
18 POSTRETIREMENT PROVISIONS; AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-208, 19-20-305,  
19 19-20-409, 19-20-412, 19-20-503, 19-20-602, 19-20-603, 19-20-605, 19-20-702, 19-20-703,  
20 19-20-706, 19-20-711, 19-20-712, 19-20-713, 19-20-715, 19-20-801, 19-20-804, 19-20-902,  
21 19-20-903, 19-20-904, 19-20-905, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING AN  
22 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**

## 1 HOUSE BILL NO. 134

2 INTRODUCED BY J. JOHNSON, HARRINGTON, SQUIRES, HERTEL, BARTLETT, LYNCH, CHRISTIAENS

3 BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE  
6 TEACHERS' RETIREMENT SYSTEM; DEFINING "TERMINATION", "TERMINATION PAY", AND "VESTED";  
7 PROVIDING TERMINATION PAY OPTIONS; CLARIFYING THAT TEACHERS' RETIREMENT SYSTEM  
8 PROVISIONS MUST COMPLY WITH FEDERAL TAX LAWS REGARDING QUALIFIED PLAN STATUS;  
9 CLARIFYING THE DISTRIBUTION OF BENEFITS TO BENEFICIARIES; CLARIFYING CERTAIN DEFINITIONS;  
10 CLARIFYING DEFINITIONS RELATED TO COMPENSATION USED TO DETERMINE BENEFITS; CLARIFYING  
11 THAT FAMILY LAW ORDERS AFFECTING DISTRIBUTION OF BENEFITS ~~MAY NOT BE ENTERED UNLESS~~  
12 APPROVED MUST CONTAIN A STATEMENT THAT THE ORDER IS SUBJECT TO REVIEW AND APPROVAL  
13 BY THE TEACHERS' RETIREMENT BOARD; GENERALLY REVISING LANGUAGE REFERRING TO ANNUITIES;  
14 REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE PUBLIC EMPLOYEES'  
15 RETIREMENT SYSTEM; CLARIFYING CERTAIN SERVICE PROVISIONS; CLARIFYING DISPOSITION OF  
16 UNCLAIMED ACCOUNTS; REVISING CERTAIN WITHDRAWAL AND OPTIONAL ALLOWANCE PROVISIONS;  
17 REVISING PAYMENT COMMENCEMENT PROVISIONS; REVISING CERTAIN DISABILITY RETIREMENT AND  
18 REINSTATEMENT FROM DISABILITY PROVISIONS; CLARIFYING POSTRETIREMENT PROVISIONS;  
19 AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-208, 19-20-305, 19-20-409, 19-20-412, 19-20-503,  
20 19-20-602, 19-20-603, 19-20-605, 19-20-702, 19-20-703, 19-20-706, 19-20-711, 19-20-712,  
21 19-20-713, 19-20-715, 19-20-801, 19-20-804, 19-20-902, 19-20-903, 19-20-904, 19-20-905,  
22 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A  
23 RETROACTIVE APPLICABILITY DATE."

24  
25 STATEMENT OF INTENT

26 A statement of intent is required for this bill because [section 3] gives the teachers' retirement  
27 board authority to adopt administrative rules.

28 The legislature finds that it is beneficial to maintain the teachers' retirement system as a qualified  
29 plan under Internal Revenue Code regulations. Therefore, it is the intent of the legislature that statutory  
30 provisions governing the teachers' retirement system be subject to federal tax law applicable to public

1 retirement plans. The legislature intends that the board make rules useful and necessary to ensure  
2 compliance with federal law and necessary to maintain a federal tax qualified plan status.

3  
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5  
6 **NEW SECTION. Section 1. Earned compensation -- part-time service.** The earned compensation  
7 of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time  
8 service during the 5 years preceding the member's retirement is the compensation that the member would  
9 have earned in the final 3 years had the member's part-time service been full-time service. To determine  
10 the compensation that the member would have earned, the compensation reported must be divided by the  
11 part-time service credited to the member's account.

12  
13 **NEW SECTION. Section 2. Termination pay.** If a member receives termination pay at the time of  
14 termination and elects to retire at that time, the member shall select one of the following options:

15 (1) The member may use termination pay in the calculation of the member's average final  
16 compensation. The member and the employer shall pay contributions to the retirement system as  
17 determined by the board to adequately compensate the system for the additional retirement benefit. The  
18 contributions must be made at the time of termination.

19 (2) The member may use a yearly amount of termination pay added to each of the 3 consecutive  
20 years' salary used in the calculation of the member's average final compensation. To determine the amount  
21 of termination pay used in the calculation of average final compensation, termination pay must be divided  
22 by the total number of years of creditable service to determine a yearly amount. The member and the  
23 employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602  
24 and 19-20-605(1).

25 (3) The member may exclude the termination pay from the average final compensation. A  
26 contribution is not required of either the member or the employer, and any contributions made under  
27 19-20-602 and 19-20-605 must be refunded.

28  
29 **NEW SECTION. Section 3. Retaining qualified plan status -- board rulemaking authority.** If a  
30 provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue



1 Code applicable to public retirement systems and consequent federal administrative regulations, the  
2 provision is either ineffective or must be interpreted to conform to the federal qualification requirements  
3 and allow the system to retain tax-deferred status. The board may adopt rules to implement this section.  
4

5 **NEW SECTION. Section 4. Effect of no designation or no surviving beneficiary.** (1) If a beneficiary  
6 is not designated or if no designated beneficiary survives the payment recipient, the estate of the payment  
7 recipient is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not  
8 received prior to the death of the payment recipient. If the estate would not be probated but for the amount  
9 due from the retirement system, all of the amount due must be paid directly, without probate, to the  
10 surviving next of kin of the deceased or to the guardians of the survivor's estate, share and share alike.

11 (2) Payment must be made in the same order in which the following groups are listed:

- 12 (a) husband or wife;  
13 (b) children;  
14 (c) father and mother;  
15 (d) grandchildren;  
16 (e) brothers and sisters; or  
17 (f) nieces and nephews.

18 (3) A payment may not be made to a person included in any of the groups listed in subsection (2)  
19 if at the date of payment there is a living person in any of the groups preceding the group of which the  
20 person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon  
21 a form supplied by the system, that there are no living individuals in the groups preceding the group of  
22 which the person is a member and that the estate of the deceased will not be probated.

23 (4) The payment must be in full and complete discharge and acquittance of the board and system  
24 on account of the member's or payment recipient's death.  
25

26 **Section 5.** Section 19-20-101, MCA, is amended to read:

27 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,  
28 the following definitions apply:

29 (1) "Accumulated contributions" means the sum of all the amounts deducted from the  
30 compensation of a member or paid by a member and credited to the member's individual account in the

1 annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a  
2 benefit at the time of retirement.

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

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

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

11 (5) ~~(a)~~ "Average final compensation" means the average of ~~the~~ a member's earned compensation  
12 ~~of a member~~ during the 3 consecutive years of full-time service or as provided under [section 1] that yield  
13 the highest average and on which contributions have been made as required by 19-20-602 or 19-20-413.  
14 If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for  
15 all members and have been continuously reported as earned compensation in a like amount for at least the  
16 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of  
17 average final compensation. If amounts defined in subsection (6)(b) have been reported as earned  
18 compensation for less than 5 fiscal years or if the member has been given the option to have amounts  
19 reported as earned compensation, any amounts reported in the 3-year period that constitute average final  
20 compensation must be included in average final compensation as provided under [section 2(2)].

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

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

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

30 (i) ~~use the total termination pay in the calculation of the average final compensation. The member~~

1 ~~and the employer shall pay contributions to the retirement system as are determined by the board to~~  
 2 ~~adequately compensate the system for the additional retirement benefit. The contributions must be made~~  
 3 ~~at the time the termination pay is received.~~

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

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

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

17 ~~(6)(4) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other~~  
 18 ~~benefit provided by the retirement system formally designated by a member, retiree, or benefit recipient to~~  
 19 ~~receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.~~

20 ~~(7)(5) "Creditable service" is that service defined by 19-20-401.~~

21 ~~(8)(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive~~  
 22 ~~of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an~~  
 23 ~~employer, ~~as defined under this chapter,~~ before any tax-deferred pretax deductions allowed under the~~  
 24 ~~Internal Revenue Code are deducted from the member's compensation, ~~exclusive of maintenance,~~~~  
 25 ~~~~allowances, and expenses.~~ The earned compensation is remuneration that would have been paid to a~~  
 26 ~~member for full-time service but was not paid to the member because of a reduction in compensation, pay,~~  
 27 ~~or salary due to a temporary absence, provided that the retirement system receives the contribution~~  
 28 ~~required by 19-20-413. The earned compensation of a member who had less than 3 consecutive years of~~  
 29 ~~full-time service during the 5 years preceding the member's retirement is the compensation, pay, or salary~~  
 30 ~~that the member would have earned had the member's part-time service been full-time service. The earned~~

1 compensation of a member who is awarded a disability retirement allowance prior to the completion of a  
 2 full year is the compensation, pay, or salary that the member would have received had the member  
 3 completed the full year, except that any termination pay, as defined in subsection (5)(e), received by the  
 4 member is limited to the amount actually paid and is not the amount that the member would have earned  
 5 had the member completed the full year.

6 (b) Earned compensation does not mean:

7 (i) direct employer premium payments on behalf of members for health or dependent care expense  
 8 accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental,  
 9 or any other insurance;

10 (ii) any direct employer payment or reimbursement for professional membership dues; maintenance;  
 11 housing; day care; or automobile, travel, lodging, or entertaining expenses; or any similar payment for any  
 12 form of maintenance, allowance, or expenses;

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

14 (iv) any noncash benefit provided by an employer to or on behalf of an employee.

15 (c) Earned compensation does not include lump-sum payments in respect to unused, accumulated  
 16 sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive  
 17 or severance payment contingent upon the employee terminating employment.

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

20 ~~(9)~~(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or  
 21 subdivision of the state that employs a person who is designated a member of the retirement system.

22 ~~(10)~~(8) "Full-time service" means service that is full-time and that extends over a normal academic  
 23 year of at least 9 months. With respect to those members employed by the office of the superintendent  
 24 of public instruction, any other state agency or institution, or the office of a county superintendent, full-time  
 25 service means service that is full-time and that totals at least 9 months in any year.

26 ~~(11)~~(9) "Member" means a person who has an individual account in the annuity savings fund. An  
 27 active member is a person included under the provisions of 19-20-302. An inactive member is a person  
 28 included under the provisions of 19-20-303.

29 ~~(12)~~(10) "Part-time service" means service that is less than full-time or that totals less than 9  
 30 months in ~~any~~ a normal academic year. Part-time service must be credited in the proportion that the actual

1 time worked ~~bears~~ compares to full-time service.

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

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

6 ~~(15)~~(11) "Prior service" means employment of the same nature as service ~~defined in subsection (20)~~  
7 but rendered before September 1, 1937.

8 ~~(16)~~(12) "Regular interest" means interest at 4% ~~per annum~~ a year compounded annually or at ~~such~~  
9 ~~other~~ a rate as may be set by the retirement board in accordance with 19-20-501(2).

10 ~~(17)~~(13) "Retirement allowance" means ~~the annuity plus the pension~~ a payment due monthly to a  
11 person who has qualified for service or disability retirement or due to a beneficiary as provided in  
12 19-20-1001.

13 ~~(18)~~(14) "Retirement board" or "board" means the retirement system's governing board provided  
14 for in 2-15-1010.

15 ~~(19)~~(15) "Retirement system" or "system" means the teachers' retirement system of the state of  
16 Montana provided for in 19-20-102.

17 ~~(20)~~(16) "Service" means the performance of instructional duties or related activities that would  
18 entitle the person to active membership in the retirement system under the provisions of 19-20-302.

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

22 (18) "Termination pay" means any form of termination pay made at the time of retirement or death;  
23 payments contingent on the employee terminating employment; any lump-sum payment for deferred  
24 compensation, sick leave, or accumulated vacation credit; or any other payment for time not worked other  
25 than compensation received while on sick leave or authorized leave of absence.

26 (19) "Vested" means that a member has been credited with at least 5 full years of membership  
27 service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has  
28 a right to a future retirement benefit."

29

30 **Section 6.** Section 19-20-104, MCA, is amended to read:

1           **"19-20-104. Guarantee by state.** Regular interest charges payable, the creation and maintenance  
 2 of reserves in the pension accumulation fund, and the maintenance of ~~annuity-reserve~~ accumulated  
 3 contributions in the annuity ~~reserve~~ savings fund, as provided for in this chapter, and the payment of all  
 4 ~~annuities, pensions~~ retirement allowances, refunds, and other benefits granted under the retirement system  
 5 are obligations of the state of Montana."

6  
 7           **Section 7.** Section 19-20-208, MCA, is amended to read:

8           **"19-20-208. Duties of employer.** Each employer shall:

9           (1) pick up the contribution of each employed member ~~employed by him~~ at the rate prescribed by  
 10 19-20-602 and transmit the contribution each month to the ~~secretary~~ executive director of the retirement  
 11 board;

12           (2) ~~pay~~ transmit to the ~~secretary~~ executive director of the retirement board the employer's  
 13 contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted ~~to the~~  
 14 ~~secretary~~;

15           (3) keep records and, as required by the retirement board, furnish information to the board that is  
 16 required in the discharge of the board's duties;

17           (4) upon the employment of a person who is required to become a member of the retirement  
 18 system, inform ~~him~~ the person of ~~his~~ the rights and obligations relating to the retirement system;

19           (5) whenever applicable, inform an employee of ~~his~~ the right to elect to participate in the optional  
 20 retirement program under Title 19, chapter 21;

21           (6) at the request of the retirement board, certify the names of all persons who are eligible for  
 22 membership or who are members of the retirement system; ~~and~~

23           (7) notify the retirement board of the employment of a person eligible for membership and forward  
 24 ~~his~~ the person's membership application to the board;

25           (8) if the employer has converted to earned compensation amounts excluded from earned  
 26 compensation, for each retiring member, certify to the board the amounts reported to the system in each  
 27 of the 5 years preceding the member's retirement."

28  
 29           **Section 8.** Section 19-20-305, MCA, is amended to read:

30           **"19-20-305. Alternate payees -- family law orders.** (1) A participant in a retirement system may

1 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, retiree, or an actual or potential beneficiary, survivor, or  
4 contingent annuitant of the retirement system designated pursuant to this chapter; and

5 (b) "family law order" means a certified copy of a judgment, decree, or order of a court of with  
6 competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or  
7 marital property rights that includes a transfer of all or a portion of a participant's payment rights in a  
8 retirement system to an 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 survive  
 3 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 ~~(7) A court may not enter a family law order relating to payments by the system unless terms of~~  
 10 ~~the proposed order have been approved by the board~~ EACH FAMILY LAW ORDER ESTABLISHING A FINAL  
 11 OBLIGATION CONCERNING PAYMENTS BY THE RETIREMENT SYSTEM MUST CONTAIN A STATEMENT  
 12 THAT THE ORDER IS SUBJECT TO REVIEW AND APPROVAL BY THE BOARD."

13

14 **Section 9.** Section 19-20-409, MCA, is amended to read:

15 **"19-20-409. Transfer of service credits and contributions from public employees' retirement**  
 16 **system.** (1) An active member may at any time before retirement make a written election with the  
 17 retirement board to qualify in the teachers' retirement system all of the member's previous creditable  
 18 service in the public employees' retirement system. The amount that must be paid to the retirement system  
 19 to qualify this service under this section is the sum of subsections (2) and (3).

20 ~~(2) In addition to the amounts directly paid or transferred by the member under subsection (3), the~~  
 21 The public employees' retirement system shall transfer to the teachers' retirement system an amount equal  
 22 to 72% of the amount payable by the member.

23 (3) The member shall pay either directly or by transferring contributions on account with the public  
 24 employees' retirement system an amount equal to the member's accumulated contributions at the time that  
 25 active membership was terminated, plus accrued interest. Interest must be calculated from the date of  
 26 termination until payment is received by the retirement system, based on the interest tables in use by the  
 27 public employees' retirement system.

28 (4) A member who qualifies service from the public employees' retirement system in the teachers'  
 29 retirement system must complete 5 years of membership service in the teachers' retirement system to  
 30 qualify or purchase military service, out-of-state teaching service, employment while on leave, and private



1 school employment.

2 (5) The retirement board shall determine the service credits that may be transferred.

3 (6) If an active member who also has creditable service in the public employees' retirement system  
4 before becoming a member of the teachers' retirement system dies before qualifying this service in the  
5 teachers' retirement system and if the member's service credits from both systems, when combined, entitle  
6 the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers'  
7 retirement system. Before payment of the death benefit, the public employees' retirement board must  
8 transfer to the teachers' retirement system the contributions necessary to qualify this service in the  
9 teachers' retirement system as provided in subsections (2) and (3).

10 (7) If the retirement board determines that an individual's membership was erroneously classified  
11 and reported to the public employees' retirement system, the member's accumulated contributions and  
12 service, together with employer contributions plus interest, must be transferred to the teachers' retirement  
13 system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605,  
14 respectively, are the liability of the employee and the employing entity where the error occurred,  
15 respectively. For the period of time that the employer contributions are held by the public employees'  
16 retirement system, interest paid on employer contributions transferred under this subsection must be  
17 calculated at the short-term investment pool rate earned by the board of investments in the fiscal year  
18 preceding the transfer request."

19

20 **Section 10.** Section 19-20-412, MCA, is amended to read:

21 **"19-20-412. Election to purchase additional service.** (1) (a) Except as provided in subsection (3),  
22 a member with 5 years or more of creditable service may make a written election with the retirement board  
23 to purchase, for the purpose of calculating the member's retirement allowance, 1 year of additional service  
24 for:

25 (i) each 5 years of service on which contributions have been made as required under the provisions  
26 of 19-20-602; and

27 (ii) each 5 years of membership service as defined in Title 19, chapter 3, for which contributions  
28 have been made as required under the provisions of 19-20-409.

29 (b) A maximum of 5 years of additional service may be purchased under this section. A part-time  
30 member may purchase additional service on a prorated basis.

1 (2) (a) To purchase additional service under this section, a member shall contribute, in a lump-sum  
2 payment or in installments as agreed upon by the member and the retirement board, an amount equal to:

3 (i) the combined employer and employee rate on July 1, 1989, or the combined rate in effect at  
4 the time the member is eligible to purchase the service, whichever date is later, multiplied by the member's  
5 earned compensation for full-time service as provided in subsection (2)(b); and

6 (ii) interest at a rate of 8% compounded annually from July 1, 1989, or from the date at which the  
7 member is eligible to purchase the service, whichever date is later.

8 (b) The earned compensation used in calculating the cost of purchasing additional service under  
9 this section is:

10 (i) for the first year of service purchased, the member's earned compensation for full-time service  
11 for the 1988-89 school year or for the member's fifth year of service, whichever year is later;

12 (ii) for the second year of service purchased, the member's earned compensation for full-time  
13 service for the 1988-89 school year or for the member's 10th year of service, whichever year is later;

14 (iii) for the third year of service purchased, the member's earned compensation for full-time service  
15 for the 1988-89 school year or for the member's 15th year of service, whichever year is later;

16 (iv) for the fourth year of service purchased, the member's earned compensation for full-time  
17 service for the 1988-89 school year or for the member's 20th year of service, whichever year is later; and

18 (v) for the fifth year of service purchased, the member's earned compensation for full-time service  
19 for the 1988-89 school year or for the member's 25th year of service, whichever year is later.

20 (3) A member who became a member prior to July 1, 1989, and who is eligible to purchase  
21 creditable service under 19-3-504, 19-3-510, 19-3-512, 19-3-513, 19-20-402, 19-20-403, 19-20-408,  
22 19-20-410, or 19-20-411 may not purchase additional service under this section unless the member elects  
23 in writing to:

24 (a) waive eligibility to purchase creditable service under sections referred to in subsection (3); and

25 (b) apply the accumulated contributions made under sections referred to in subsection (3) to the  
26 cost of additional service purchased under this section.

27 (4) Additional service purchased under this section may not be used to qualify a member for service  
28 retirement."

29

30 **Section 11.** Section 19-20-503, MCA, is amended to read:

1           **"19-20-503. Transfer of dormant ~~savings account~~ or unclaimed accounts.** (1) The retirement board  
 2 may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the  
 3 pension accumulation fund if the account has been dormant for a period of 7 years. ~~No~~ A right of the  
 4 member may not be jeopardized by ~~such~~ the transfer, and the amount ~~shall~~ must be transferred back to the  
 5 member's annuity savings account upon ~~his~~ the member's request.

6           (2) Retirement benefits must be claimed within 5 years of the date of the member's death. If the  
 7 named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member's  
 8 account balance reverts to the pension trust fund."

9  
 10           **Section 12.** Section 19-20-602, MCA, is amended to read:

11           **"19-20-602. Annuity savings fund -- member's contribution.** The annuity savings fund is a fund  
 12 in which the contributions for the members to provide for their ~~annuities~~ retirement allowance or benefits  
 13 must be accumulated in individual accounts for each member. The normal contribution of each member is  
 14 7.044% of the member's earned compensation. Contributions to and payments from the annuity savings  
 15 fund must be made in the following manner:

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

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

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

28           (d) The deductions must be made notwithstanding that the minimum compensation provided by  
 29 law for a member may be reduced by the deductions. Each member is considered to consent to the  
 30 deductions prescribed by this section, and payment of salary or compensation less the deductions is a

1 complete discharge of all claims for the services rendered by the member during the period covered by the  
2 payment, except as to the benefits provided by the retirement system.

3 (2) In addition to the normal contributions and subject to the approval of the retirement board, a  
4 member may redeposit in the annuity savings fund, by a single payment or by an increased rate of  
5 contribution, an amount equal to accumulated contributions that the member has previously withdrawn,  
6 plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

7 (3) The accumulated contributions of a member withdrawn by the member or paid to the member's  
8 estate or to the member's designated beneficiary in event of the member's death must be paid from the  
9 annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be  
10 transferred from the annuity savings fund to the pension accumulation fund."

11

12 **Section 13.** Section 19-20-603, MCA, is amended to read:

13 **"19-20-603. Withdrawal of accumulated contributions -- options.** ~~Any~~ An inactive member electing  
14 to do so or ~~any~~ a person whose membership terminates without a prospect or anticipation that the member  
15 will return to work for an employer within 60 days of termination may withdraw the member's ~~or person's~~  
16 accumulated contributions from the annuity ~~account~~ savings fund in the retirement system in accordance  
17 with the following provisions:

18 (1) An inactive member under the provisions of ~~subsection (1) or (3) of 19-20-303~~ (1) or (3) may  
19 elect, without right of revocation, to withdraw the member's accumulated contributions. If the member  
20 does not withdraw the accumulated contributions, the member remains an inactive member of the  
21 retirement system with the right to qualify for its benefits.

22 (2) Upon recovery from a disabling illness or separation from the armed forces, ~~any~~ a person  
23 qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's  
24 accumulated contributions unless the member returns to active membership.

25 (3) ~~Any~~ A person whose membership terminates under the provisions of 19-20-304(4) may  
26 withdraw the person's accumulated contributions.

27 (4) Upon written request, a terminating member may have the payment of ~~the~~ all or any portion  
28 of the member's accumulated contributions split. The tax-deferred portion of the contributions may be paid  
29 directly to an individual retirement account or other rolled over or transferred into another qualified plan  
30 designated by the member, and the other. The portion not rolled over or transferred must be paid directly

1 to the terminating member. The board shall provide forms for making the written request. The terminating  
 2 member is responsible for correctly designating an account or plan eligible to receive the tax-deferred  
 3 amount in order to continue the tax-deferred status of the amount."

4  
 5 **Section 14.** Section 19-20-605, MCA, is amended to read:

6 **"19-20-605. Pension accumulation fund -- employer's contribution.** The pension accumulation fund  
 7 is the fund in which the reserves for payment of ~~pensions and annuities~~ retirement allowances and benefits  
 8 must be accumulated and from which ~~pensions, annuities,~~ retirement allowances and benefits must be paid  
 9 to ~~or on account of beneficiaries credited with prior service~~ retirees or their beneficiaries. Contributions to  
 10 and payments from the pension accumulation fund must be made as follows:

11 (1) Each employer shall pay into the pension accumulation fund an amount equal to 7.47% of the  
 12 earned compensation of each member employed during the whole or part of the preceding payroll period.

13 (2) If the employer is a district or community college district, the trustees shall budget and pay for  
 14 the employer's contribution under the provisions of 20-9-501.

15 (3) If the employer is the superintendent of public instruction, a public institution of the state of  
 16 Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the  
 17 legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's  
 18 contribution.

19 (4) If the employer is a county, the county commissioners shall budget and pay for the employer's  
 20 contribution in the manner provided by law for the adoption of a county budget and for payments under  
 21 the budget.

22 (5) All interest and other earnings realized on the money of the retirement system ~~shall~~ must be  
 23 credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity  
 24 savings fund ~~shall~~ must be transferred to that fund from the pension accumulation fund.

25 (6) ~~All pensions, annuities, and benefits must be paid from the pension accumulation fund.~~

26 ~~(7)~~ The retirement board may, in its discretion, transfer from the pension accumulation fund an  
 27 amount necessary to cover expenses of administration."

28  
 29 **Section 15.** Section 19-20-702, MCA, is amended to read:

30 **"19-20-702. Optional allowances.** (1) Until the first payment on account of any benefit becomes

1 normally due, any member may elect to receive one of the optional allowances described in subsection (2)  
2 in lieu of the normal form of retirement allowance, which is provided for in ~~part 8 of this chapter and~~  
3 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's  
4 election to receive an optional allowance is void and the member's death will be considered as that of an  
5 active member.

6 (2) An optional allowance is the actuarial equivalent of the member's service retirement or disability  
7 retirement allowance at the time of the member's retirement effective date and provides an allowance  
8 payable to the member throughout the member's lifetime and, upon the member's death, an allowance  
9 payable to the person that the member nominated by written designation, duly acknowledged and filed with  
10 the retirement board at the time of the member's retirement, in accordance with one of the following  
11 options:

12 (a) Option A--the optional allowance will be paid to the member throughout the member's lifetime  
13 and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

14 (b) Option B--the optional allowance will be paid to the member throughout the member's lifetime,  
15 and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime  
16 of the member's designated beneficiary.

17 (c) Option C--the optional allowance will be paid to the member throughout the member's lifetime,  
18 and upon the member's death, two-thirds of the optional allowance will be continued throughout the  
19 lifetime of the member's designated beneficiary.

20 (d) ~~Option D--some other benefit will be paid either to the member or the member's surviving~~  
21 ~~designated beneficiary in accordance with provisions approved by the retirement board~~ Period certain and  
22 life--a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever  
23 is greater.

24 (i) The member shall elect one of the following certain time periods:

25 (A) 10 years if the member is 75 years of age or younger at the time of retirement; or

26 (B) 20 years if the member is 65 years of age or younger at the time of retirement.

27 (ii) At the time of retirement, the member shall file with the board a written nomination of  
28 beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless  
29 limited by a family law order, the nominated beneficiary may be changed by the member at any time by  
30 filing with the board a written notice designating different beneficiaries.

1 (3) (a) Upon written request to the retirement board, a retired member whose effective date of  
 2 retirement is before October 1, 1993, and who is receiving an optional retirement allowance may designate  
 3 a different beneficiary, select a different option, or convert the member's optional retirement allowance to  
 4 a regular retirement or disability allowance if:

5 (i) the original beneficiary has died; or

6 (ii) the member has been divorced from the original beneficiary and the original beneficiary has not  
 7 been granted the right to receive the optional retirement allowance as part of the divorce settlement.

8 (b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement  
 9 or disability allowance to reflect the change.

10 (4) Effective on the first of the month following ~~receipt of notification of~~ the death of a person  
 11 nominated as the designated beneficiary under subsection ~~(2) (2)(a), (2)(b), or (2)(c)~~, any optional retirement  
 12 allowance that is effective after October 1, 1993, will revert to the full normal form of retirement allowance  
 13 available at the time of retirement. The normal form of retirement allowance available must be increased  
 14 by the value of any postretirement adjustments received by the member since the effective date of  
 15 retirement. The retired member may, within 180 days 18 MONTHS of the death of the designated  
 16 beneficiary, file a written application with the board to designate a different beneficiary and to select an  
 17 actuarially equivalent optional allowance. The optional allowance is effective on the first day of the month  
 18 following receipt of the retiree's application."

19  
 20 **Section 16.** Section 19-20-703, MCA, is amended to read:

21 **"19-20-703. Payments to be monthly.** ~~(1) All pensions and annuities shall~~ retirement allowances  
 22 must be paid in equal monthly installments.

23 (2) The retirement allowance may commence:

24 (a) no earlier than the first day of the month following the member's termination date or on the first  
 25 day of the month following the date when the member first becomes eligible, whichever date is later; or

26 (b) if requested by the inactive member in writing:

27 (i) on the first day of a later month; or

28 (ii) on the first day of the month following the member's 60th birthday."

29  
 30 **Section 17.** Section 19-20-706, MCA, is amended to read:

1           **"19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305, the  
 2 ~~pensions, annuities, retirement allowances~~ or any other benefits accrued or accruing to any person under  
 3 the provisions of the retirement system and the accumulated contributions and cash and securities in the  
 4 various funds of the retirement system are:

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

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

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

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

12           (3) unassignable except as specifically provided in this chapter."  
 13

14           **Section 18.** Section 19-20-711, MCA, is amended to read:

15           **"19-20-711. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a  
 16 ~~member retiree~~ or beneficiary is eligible to receive a postretirement adjustment as provided in 19-20-713  
 17 if ~~he~~ the retiree is receiving a:

18           (a) service retirement allowance ~~and is 55 years of age or older on or before June 30 in the year~~  
 19 ~~that the postretirement adjustment is made;~~ or

20           (b) disability or survivorship allowance.

21           (2) A ~~member~~ retiree or beneficiary is ineligible to receive a postretirement adjustment under  
 22 subsection (1) unless ~~he~~ the retiree or beneficiary has been receiving a monthly service, disability, or  
 23 survivorship allowance for at least 24 consecutive months on or before June 30 in the year that the  
 24 adjustment is made."  
 25

26           **Section 19.** Section 19-20-712, MCA, is amended to read:

27           **"19-20-712. Funding for postretirement adjustment -- reserve fund.** (1) At the end of each fiscal  
 28 year, the board shall determine the total investment income ~~earned~~ minus unrealized gains or losses on the  
 29 retirement fund for that fiscal year. From this amount, the board shall subtract the:

30           (a) ~~actuarial amount required to fund the retirement system for the fiscal year~~ amount equivalent



1 to the actuarially required investment yield; and

2 (b) retirement system's administrative and investment expenses for the fiscal year.

3 (2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of  
4 investment income earned on that portion of the retirement fund balance representing retired members.

5 (b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

6 (3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use  
7 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment  
8 to eligible ~~members~~ retirees or beneficiaries under 19-20-713.

9 (4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement  
10 adjustment of at least \$1 under 19-20-713, an adjustment may not be made in that calendar year.

11 (5) The amount available for payment of the postretirement allowance is limited to an amount that  
12 would provide a percentage increase in the average service, disability, or survivorship allowance of all  
13 eligible ~~members~~ retirees, when combined with the postretirement adjustment, that is equal to or less than  
14 the percentage increase for the previous calendar year in the annual average consumer price index for urban  
15 wage earners and workers compiled by the bureau of labor statistics, United States department of labor,  
16 or its successor agency."

17

18 **Section 20.** Section 19-20-713, MCA, is amended to read:

19 **"19-20-713. Payment and amount of postretirement adjustment.** (1) Effective January 1 of each  
20 year that funds are available under 19-20-712, a ~~member~~ retiree or beneficiary eligible under 19-20-711  
21 shall receive a postretirement adjustment in the form of a monthly benefit payable for life.

22 (2) The board shall calculate the amount of the postretirement allowance payable to an eligible  
23 ~~member~~ retiree or beneficiary by:

24 (a) dividing the amount available under 19-20-712(3) for payment of the postretirement allowance  
25 by the total accumulated years of service for all eligible ~~members~~ retirees and beneficiaries;

26 (b) multiplying the quotient obtained in subsection (2)(a) by the ~~member's~~ retiree's total years of  
27 service;

28 (c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly ~~annuity~~  
29 retirement allowance from actuarial tables adopted by the board; and

30 (d) applying the provisions contained in subsections (3) and (4).

1 (3) If a ~~member~~ retiree had elected to receive an optional retirement allowance, the amount of ~~his~~  
 2 the retiree's postretirement allowance must be adjusted by the appropriate optional factor.

3 (4) If more than one beneficiary is receiving a ~~member's~~ retiree's retirement allowance, the  
 4 postretirement adjustment must be divided in the same manner as the ~~member's~~ retiree's retirement  
 5 allowance."

6  
 7 **Section 21.** Section 19-20-715, MCA, is amended to read:

8 "**19-20-715. Compensation limit.** (1) Compensation in excess of the limitations set forth in section  
 9 401(a)(17) of the Internal Revenue Code must be disregarded for individuals who are not eligible employees.  
 10 The limitation on compensation for eligible employees may not be less than the amount that was allowed  
 11 to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible  
 12 employee is an individual who was a member in the retirement system prior to July 1, 1996.

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

18 (3) Earned compensation in excess of the amount specified in subsection (2) is considered  
 19 termination pay and must be included in the calculation of average final compensation as provided in  
 20 [section 2]. "

21  
 22 **Section 22.** Section 19-20-801, MCA, is amended to read:

23 "**19-20-801. Eligibility for ~~superannuation~~ service retirement.** A member who has at least 5 full  
 24 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained  
 25 the age of 60 or has been credited with full-time or part-time service in 25 or more years may retire from  
 26 service if ~~he~~ the member has terminated employment in all positions from which the member is eligible to  
 27 retire and files with the retirement board his a written application setting forth the fact of ~~his~~ the member's  
 28 retirement."

29  
 30 **Section 23.** Section 19-20-804, MCA, is amended to read:

1           **"19-20-804. Allowance for superannuation service retirement.** (1) Upon ~~superannuation~~  
 2 ~~retirement, a termination, an eligible~~ member shall must receive a retirement allowance ~~consisting of a~~  
 3 ~~pension which, together with an annuity, provides a retirement allowance~~ equal to one-sixtieth of ~~his the~~  
 4 member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of  
 5 years of creditable service, service transferred under 19-20-409, and additional service purchased under  
 6 19-20-412.

7           (2) ~~Any~~ Except as provided in subsection (3), a retired member may be employed as a part-time  
 8 or substitute teacher in Montana and may earn, without loss of retirement benefits, an amount not to  
 9 exceed the greater of:

10           (a) one-third of the sum of ~~his the~~ member's average final compensation plus normal annual salary  
 11 increases for teaching personnel employed by the school district, state agency, political subdivision, or  
 12 university unit that employed the member at the time of retirement; or

13           (b) one-third of the median of the average final compensation for members retired during the  
 14 preceding fiscal year as determined by the retirement board.

15           (3) If an early-retired member under 19-20-802 is reemployed with the same employer within 30  
 16 days from the member's effective date of retirement or if the early-retired member is guaranteed  
 17 reemployment with the same employer, the member must be considered to have continued in the status  
 18 of an active member and not to have separated from service. Any retirement allowance payments received  
 19 by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and  
 20 the retirement allowance must be terminated."

21  
 22           **Section 24.** Section 19-20-902, MCA, is amended to read:

23           **"19-20-902. Allowance for disability retirement.** (1) Upon retirement for disability, a member must  
 24 receive a disability retirement allowance equal to the greater of:

25           ~~(1)(a)~~ (a) one-sixtieth of the member's average final compensation multiplied by the sum of the number  
 26 of years of creditable service, service transferred under 19-20-409, and additional service purchased under  
 27 19-20-412, ~~if the retirement allowance exceeds one-fourth of the member's average final compensation;~~  
 28 or

29           ~~(2)(b)~~ (b) ~~a pension that, together with the member's annuity, provides a total retirement allowance~~  
 30 ~~equal to~~ one-fourth of the member's average final compensation.

1           (2) The earned compensation in the year of termination that is included in the calculation of average  
 2 final compensation of a member who is awarded a disability retirement allowance prior to the completion  
 3 of a full year is the compensation, pay, or salary that the member would have received under the member's  
 4 contract had the member completed the full year. Any termination pay received by the member is limited  
 5 to the amount actually paid and is not the amount that the member would have earned had the member  
 6 completed the full year."

7  
 8           **Section 25.** Section 19-20-903, MCA, is amended to read:

9           **"19-20-903. Medical examination of disability retiree.** (1) Once each year during the first 5 years  
 10 following the retirement of a member on a disability retirement allowance and once in every 3-year period  
 11 thereafter, the retirement board may require ~~and, upon the beneficiary's application, shall permit~~ a disability  
 12 ~~beneficiary~~ benefit recipient who has not yet attained the age of 60 to undergo a medical examination by  
 13 a physician or physicians designated by the retirement board. The examination ~~shall~~ must be made at the  
 14 place of residence of the ~~beneficiary~~ benefit recipient or other place mutually agreed upon. Based on the  
 15 examination, the board shall determine whether the disabled member is unable, by reason of physical or  
 16 mental incapacity, to perform the essential elements of the position held by the member when the member  
 17 retired. If the board determines that the member is not incapacitated, the member's retirement benefit must  
 18 be canceled. If the member disagrees with the board's determination, the member may request the board  
 19 to reconsider its action. The request for reconsideration must be made in writing within 60 days after the  
 20 receipt of the notice of the status change.

21           (2) A member whose disability retirement benefit is canceled because the board has determined  
 22 that the member is no longer incapacitated must be given preference by the member's former employer for  
 23 the position held at the time of retirement or for a comparable position that becomes available within 1 year  
 24 of cancellation of the disability retirement. The member may agree to accept an offer of employment by an  
 25 employer. Employment in any capacity by an employer terminates any right granted by this section. The  
 26 fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty  
 27 that the former employee may have or claim to have. This section does not affect any requirement for the  
 28 former employee to meet or to be able to meet professional certification and licensing standards unrelated  
 29 to the previous disability, otherwise necessary for reinstatement to duty.

30           ~~(2)(3) Should~~ If a disability ~~beneficiary~~ benefit recipient who has not yet attained the age of 60

1 ~~refuse~~ refuses to submit to a medical examination as required in subsection (1), ~~his~~ the recipient's  
 2 allowance may be discontinued until ~~his~~ the withdrawal of ~~such~~ the refusal, ~~and should his~~ if a refusal  
 3 ~~continue~~ continues for 1 year, all ~~his~~ a rights in and to ~~his~~ a disability pension may be revoked by the  
 4 retirement board."

5

6 **Section 26.** Section 19-20-904, MCA, is amended to read:

7 **"19-20-904. Adjustment of allowance.** ~~(1) If~~ (1) (a) Except as provided by subsection (1)(b), if  
 8 a retiree receiving a disability ~~beneficiary~~ retirement allowance is engaged in or is able to engage in a gainful  
 9 occupation paying more than the difference between the ~~beneficiary's~~ retiree's retirement allowance and  
 10 the ~~beneficiary's~~ retiree's average final compensation or the difference between the median salary of those  
 11 members retired during the preceding fiscal year and the ~~beneficiary's~~ retiree's retirement allowance,  
 12 whichever is greater, the retirement allowance must be reduced to an amount that, together with the  
 13 amount earnable by the ~~beneficiary~~ retiree, is equal to the ~~beneficiary's~~ retiree's average final compensation  
 14 or the median salary of those members retired during the preceding fiscal year, whichever is greater.

15 (b) If a disabled retiree is reemployed with the same employer within 30 days from the member's  
 16 effective date of retirement or if the retired member is guaranteed reemployment with the same employer,  
 17 the member must be considered to have continued in the status of an active member and not to have  
 18 separated from service. Any retirement allowance payments received by the member must be repaid to  
 19 the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be  
 20 terminated.

21 (2) If the ~~beneficiary's~~ disabled retiree's earning capacity is changed later, the ~~beneficiary's~~  
 22 retirement allowance may be further modified, but the new allowance may not exceed the retirement  
 23 allowance originally granted or an amount that, when added to the amount earnable by the ~~beneficiary~~  
 24 retiree, equals the ~~beneficiary's~~ retiree's average final compensation.

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

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

1           **Section 27.** Section 19-20-905, MCA, is amended to read:

2           "**19-20-905. Cancellation of allowance and restoration of membership.** (1) If a ~~disability beneficiary~~  
3 ~~under age 60 is restored to active service at a compensation not less than his average final compensation,~~  
4 ~~his disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements~~  
5 ~~of active membership, as provided under 19-20-302, the retiree's retirement allowance shall must cease~~  
6 ~~and he.~~ If the retiree is employed by an employer covered under this chapter, the retiree shall again become  
7 an active member of the retirement system. Any prior service certificate on the basis of which his the  
8 member's service was computed at the time of his the member's disability retirement shall must be restored  
9 to full force, and upon his the member's subsequent retirement, he shall the member must be credited with  
10 such the prior service and all his subsequent service as a member.

11           (2) If ~~he the member~~ is restored to active ~~service membership~~ on or after the attainment of the age  
12 of 55 years, ~~his pension the member's retirement allowance~~ upon subsequent retirement may not exceed  
13 ~~the pension retirement allowance that he the member~~ would have received had ~~he the member~~ remained  
14 in service during the period of ~~his the member's~~ previous retirement or the sum of the ~~pension which he~~  
15 ~~retirement allowance that the member~~ was receiving immediately prior to ~~his the member's~~ last restoration  
16 to service and the ~~pension retirement allowance~~ that ~~he the member~~ would have received on account of  
17 ~~his the member's~~ service since ~~his the member's~~ last restoration had ~~he the member~~ entered service at that  
18 time as a new member."

19

20           **Section 28.** Section 19-20-1001, MCA, is amended to read:

21           "**19-20-1001. Allowances for death of member.** (1) If a member dies before retirement, ~~his the~~  
22 ~~member's~~ accumulated contributions ~~shall must~~ be paid to ~~his the member's~~ estate or ~~such to a person as~~  
23 ~~he the member~~ may have nominated by a written designation in a manner prescribed by the board and filed  
24 with the retirement board prior to ~~his the member's~~ death ~~in the manner prescribed by the board.~~

25           (2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason  
26 of service for a retirement benefit, the nominated beneficiary ~~nominated by the deceased member~~ may elect  
27 to receive a ~~monthly life annuity retirement allowance.~~ The monthly life annuity shall retirement allowance  
28 must be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, in the same  
29 manner as if the member elected option A provided for in 19-20-702(2)(a).

30           (b) In the event that payments made to an annuitant a recipient do not equal the amount of the

1 member's accumulated contributions ~~prior to~~ before the ~~annuitant's~~ member's death, the difference  
 2 between the total ~~annuity~~ retirement allowance payments made and the amount of the accumulated  
 3 contributions ~~shall~~ at the time of the member's death must be paid to the beneficiary.

4 (3) If the deceased member had 5 or more years of creditable service and was an active member  
 5 in the state of Montana within 1 year ~~prior to his~~ before the member's death, a lump-sum death benefit of  
 6 \$500 is payable to ~~his~~ the member's designated beneficiary.

7 (4) If a deceased member had 5 or more years of creditable service and was an active member in  
 8 the state of Montana within 1 year prior to ~~his~~ the member's death, the sum of \$200 ~~per a~~ month shall  
 9 must be paid to each minor child of the deceased member until ~~such~~ the child reaches ~~his 18th birthday~~  
 10 18 years of age."

11

12 **Section 29.** Section 19-20-1002, MCA, is amended to read:

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

15 (2) In the event that payments made to ~~an annuitant~~ a benefit recipient do not equal the amount  
 16 of the member's accumulated contributions ~~prior to~~ before the ~~annuitant's death~~ member's retirement, the  
 17 difference between the total retirement allowance paid and the amount of the accumulated contributions  
 18 ~~shall~~ must be paid to the beneficiary.

19 (3) If a deceased member had 5 or more years of creditable service and was retired at the time of  
 20 ~~his~~ death, the sum of \$200 ~~per a~~ month shall must be paid to each minor child of the deceased ~~member~~  
 21 retiree until ~~such~~ the child reaches ~~his 18th birthday~~ 18 years of age."

22

23 **NEW SECTION. Section 30. Codification instruction.** (1) [Section 1] is intended to be codified as  
 24 an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to  
 25 [section 1].

26 (2) [Sections 2 and 4] are intended to be codified as an integral part of Title 19, chapter 20, part  
 27 7, and the provisions of Title 19, chapter 20, part 7, apply to [sections 2 and 4].

28 (3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 20, part 1, and the  
 29 provisions of Title 19, chapter 20, part 1, apply to [section 3].

30

1           **NEW SECTION. Section 31. Coordination instruction.** If \_\_\_ Bill No. \_\_\_ [LC 0553] is passed and  
2 approved and if it includes sections that amend 19-20-711 through 19-20-713, then [sections 18 through  
3 20 of this act], amending 19-20-711 through 19-20-713, are void.

4

5           **NEW SECTION. Section 32. Retroactive applicability.** [Section 9] applies retroactively, within the  
6 meaning of 1-2-109, to all occurrences on or after January 1, 1995.

7

8           **NEW SECTION. Section 33. Effective date.** [This act] is effective on passage and approval.

9

-END-



HOUSE BILL NO. 134

INTRODUCED BY J. JOHNSON, HARRINGTON, SQUIRES, HERTEL, BARTLETT, LYNCH, CHRISTIAENS  
BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE  
TEACHERS' RETIREMENT SYSTEM; DEFINING "TERMINATION", "TERMINATION PAY", AND "VESTED";  
PROVIDING TERMINATION PAY OPTIONS; CLARIFYING THAT TEACHERS' RETIREMENT SYSTEM  
PROVISIONS MUST COMPLY WITH FEDERAL TAX LAWS REGARDING QUALIFIED PLAN STATUS;  
CLARIFYING THE DISTRIBUTION OF BENEFITS TO BENEFICIARIES; CLARIFYING CERTAIN DEFINITIONS;  
CLARIFYING DEFINITIONS RELATED TO COMPENSATION USED TO DETERMINE BENEFITS; CLARIFYING  
THAT FAMILY LAW ORDERS AFFECTING DISTRIBUTION OF BENEFITS ~~MAY NOT BE ENTERED UNLESS  
APPROVED~~ MUST CONTAIN A STATEMENT THAT THE ORDER IS SUBJECT TO REVIEW AND APPROVAL  
BY THE TEACHERS' RETIREMENT BOARD; GENERALLY REVISING LANGUAGE REFERRING TO ANNUITIES;  
REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM; CLARIFYING CERTAIN SERVICE PROVISIONS; CLARIFYING DISPOSITION OF  
UNCLAIMED ACCOUNTS; REVISING CERTAIN WITHDRAWAL AND OPTIONAL ALLOWANCE PROVISIONS;  
REVISING PAYMENT COMMENCEMENT PROVISIONS; REVISING CERTAIN DISABILITY RETIREMENT AND  
REINSTATEMENT FROM DISABILITY PROVISIONS; CLARIFYING POSTRETIREMENT PROVISIONS;  
AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-208, 19-20-305, 19-20-409, 19-20-412, 19-20-503,  
19-20-602, 19-20-603, 19-20-605, 19-20-702, 19-20-703, 19-20-706, 19-20-711, 19-20-712,  
19-20-713, 19-20-715, 19-20-801, 19-20-804, 19-20-902, 19-20-903, 19-20-904, 19-20-905,  
19-20-1001, AND 19-20-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A  
RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] gives the teachers' retirement  
board authority to adopt administrative rules.

The legislature finds that it is beneficial to maintain the teachers' retirement system as a qualified  
plan under Internal Revenue Code regulations. Therefore, it is the intent of the legislature that statutory  
provisions governing the teachers' retirement system be subject to federal tax law applicable to public

1 retirement plans. The legislature intends that the board make rules useful and necessary to ensure  
2 compliance with federal law and necessary to maintain a federal tax qualified plan status.

3

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

5

6 NEW SECTION. **Section 1. Earned compensation -- part-time service.** The earned compensation  
7 of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time  
8 service during the 5 years preceding the member's retirement is the compensation that the member would  
9 have earned in the final 3 years had the member's part-time service been full-time service. To determine  
10 the compensation that the member would have earned, the compensation reported must be divided by the  
11 part-time service credited to the member's account.

12

13 NEW SECTION. **Section 2. Termination pay.** If a member receives termination pay at the time of  
14 termination and elects to retire at that time, the member shall select one of the following options:

15 (1) The member may use termination pay in the calculation of the member's average final  
16 compensation. The member and the employer shall pay contributions to the retirement system as  
17 determined by the board to adequately compensate the system for the additional retirement benefit. The  
18 contributions must be made at the time of termination.

19 (2) The member may use a yearly amount of termination pay added to each of the 3 consecutive  
20 years' salary used in the calculation of the member's average final compensation. To determine the amount  
21 of termination pay used in the calculation of average final compensation, termination pay must be divided  
22 by the total number of years of creditable service to determine a yearly amount. The member and the  
23 employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602  
24 and 19-20-605(1).

25 (3) The member may exclude the termination pay from the average final compensation. A  
26 contribution is not required of either the member or the employer, and any contributions made under  
27 19-20-602 and 19-20-605 must be refunded.

28

29 NEW SECTION. **Section 3. Retaining qualified plan status -- board rulemaking authority.** If a  
30 provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue

1 Code applicable to public retirement systems and consequent federal administrative regulations, the  
2 provision is either ineffective or must be interpreted to conform to the federal qualification requirements  
3 and allow the system to retain tax-deferred status. The board may adopt rules to implement this section.  
4

5 **NEW SECTION. Section 4. Effect of no designation or no surviving beneficiary.** (1) If a beneficiary  
6 is not designated or if no designated beneficiary survives the payment recipient, the estate of the payment  
7 recipient is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not  
8 received prior to the death of the payment recipient. If the estate would not be probated but for the amount  
9 due from the retirement system, all of the amount due must be paid directly, without probate, to the  
10 surviving next of kin of the deceased or to the guardians of the survivor's estate, share and share alike.

11 (2) Payment must be made in the same order in which the following groups are listed:

- 12 (a) husband or wife;  
13 (b) children;  
14 (c) father and mother;  
15 (d) grandchildren;  
16 (e) brothers and sisters; or  
17 (f) nieces and nephews.

18 (3) A payment may not be made to a person included in any of the groups listed in subsection (2)  
19 if at the date of payment there is a living person in any of the groups preceding the group of which the  
20 person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon  
21 a form supplied by the system, that there are no living individuals in the groups preceding the group of  
22 which the person is a member and that the estate of the deceased will not be probated.

23 (4) The payment must be in full and complete discharge and acquittance of the board and system  
24 on account of the member's or payment recipient's death.

25  
26 **Section 5.** Section 19-20-101, MCA, is amended to read:

27 **"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,  
28 the following definitions apply:

29 (1) "Accumulated contributions" means the sum of all the amounts deducted from the  
30 compensation of a member or paid by a member and credited to the member's individual account in the

1 annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a  
2 benefit at the time of retirement.

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

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

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

11 (5) (a) ~~"Average final compensation" means the average of the a member's earned compensation~~  
12 ~~of a member during the 3 consecutive years of full-time service or as provided under [section 1] that yield~~  
13 ~~the highest average and on which contributions have been made as required by 19-20-602 or 19-20-413.~~  
14 ~~If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for~~  
15 ~~all members and have been continuously reported as earned compensation in a like amount for at least the~~  
16 ~~5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of~~  
17 ~~average final compensation. If amounts defined in subsection (6)(b) have been reported as earned~~  
18 ~~compensation for less than 5 fiscal years or if the member has been given the option to have amounts~~  
19 ~~reported as earned compensation, any amounts reported in the 3-year period that constitute average final~~  
20 ~~compensation must be included in average final compensation as provided under [section 2(2)].~~

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

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

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

30 (i) ~~use the total termination pay in the calculation of the average final compensation. The member~~

1 ~~and the employer shall pay contributions to the retirement system as are determined by the board to~~  
 2 ~~adequately compensate the system for the additional retirement benefit. The contributions must be made~~  
 3 ~~at the time the termination pay is received.~~

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

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

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

17 ~~(6)(4) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other~~  
 18 ~~benefit provided by the retirement system formally designated by a member, retiree, or benefit recipient to~~  
 19 ~~receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.~~

20 ~~(7)(5) "Creditable service" is that service defined by 19-20-401.~~

21 ~~(8)(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive~~  
 22 ~~of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an~~  
 23 ~~employer, as defined under this chapter, before any tax-deferred pretax deductions allowed under the~~  
 24 ~~Internal Revenue Code are deducted from the member's compensation, exclusive of maintenance,~~  
 25 ~~allowances, and expenses. The earned compensation is remuneration that would have been paid to a~~  
 26 ~~member for full-time service but was not paid to the member because of a reduction in compensation, pay,~~  
 27 ~~or salary due to a temporary absence, provided that the retirement system receives the contribution~~  
 28 ~~required by 19-20-413. The earned compensation of a member who had less than 3 consecutive years of~~  
 29 ~~full-time service during the 5 years preceding the member's retirement is the compensation, pay, or salary~~  
 30 ~~that the member would have earned had the member's part-time service been full-time service. The earned~~

1 ~~compensation of a member who is awarded a disability retirement allowance prior to the completion of a~~  
 2 ~~full year is the compensation, pay, or salary that the member would have received had the member~~  
 3 ~~completed the full year, except that any termination pay, as defined in subsection (5)(e), received by the~~  
 4 ~~member is limited to the amount actually paid and is not the amount that the member would have earned~~  
 5 ~~had the member completed the full year.~~

6 (b) Earned compensation does not mean:

7 (i) direct employer premium payments on behalf of members for health or dependent care expense  
 8 accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental,  
 9 or any other insurance;

10 (ii) any direct employer payment or reimbursement for professional membership dues; maintenance;  
 11 housing; day care; or automobile, travel, lodging, or entertaining expenses; or any similar payment for any  
 12 form of maintenance, allowance, or expenses;

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

14 (iv) any noncash benefit provided by an employer to or on behalf of an employee.

15 (c) Earned compensation does not include lump-sum payments in respect to unused, accumulated  
 16 sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive  
 17 or severance payment contingent upon the employee terminating employment.

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

20 ~~(9)(7)~~ "Employer" means the state of Montana, the trustees of a district, or any other agency or  
 21 subdivision of the state that employs a person who is designated a member of the retirement system.

22 ~~(10)(8)~~ "Full-time service" means service that is full-time and that extends over a normal academic  
 23 year of at least 9 months. With respect to those members employed by the office of the superintendent  
 24 of public instruction, any other state agency or institution, or the office of a county superintendent, full-time  
 25 service means service that is full-time and that totals at least 9 months in any year.

26 ~~(11)(9)~~ "Member" means a person who has an individual account in the annuity savings fund. An  
 27 active member is a person included under the provisions of 19-20-302. An inactive member is a person  
 28 included under the provisions of 19-20-303.

29 ~~(12)(10)~~ "Part-time service" means service that is less than full-time or that totals less than 9  
 30 months in ~~any~~ a normal academic year. Part-time service must be credited in the proportion that the actual

1 time worked ~~bears~~ compares to full-time service.

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

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

6 ~~(15)(11) "Prior service" means employment of the same nature as service defined in subsection (20)~~  
7 ~~but rendered before September 1, 1937.~~

8 ~~(16)(12) "Regular interest" means interest at 4% per annum a year compounded annually or at such~~  
9 ~~other a rate as may be set by the retirement board in accordance with 19-20-501(2).~~

10 ~~(17)(13) "Retirement allowance" means the annuity plus the pension a payment due monthly to a~~  
11 ~~person who has qualified for service or disability retirement or due to a beneficiary as provided in~~  
12 ~~19-20-1001.~~

13 ~~(18)(14) "Retirement board" or "board" means the retirement system's governing board provided~~  
14 ~~for in 2-15-1010.~~

15 ~~(19)(15) "Retirement system" or "system" means the teachers' retirement system of the state of~~  
16 ~~Montana provided for in 19-20-102.~~

17 ~~(20)(16) "Service" means the performance of instructional duties or related activities that would~~  
18 ~~entitle the person to active membership in the retirement system under the provisions of 19-20-302.~~

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

22 ~~(18) "Termination pay" means any form of termination pay made at the time of retirement or death;~~  
23 ~~payments contingent on the employee terminating employment; any lump-sum payment for deferred~~  
24 ~~compensation, sick leave, or accumulated vacation credit; or any other payment for time not worked other~~  
25 ~~than compensation received while on sick leave or authorized leave of absence.~~

26 ~~(19) "Vested" means that a member has been credited with at least 5 full years of membership~~  
27 ~~service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has~~  
28 ~~a right to a future retirement benefit."~~

29

30 **Section 6.** Section 19-20-104, MCA, is amended to read:

1           **"19-20-104. Guarantee by state.** Regular interest charges payable, the creation and maintenance  
 2 of reserves in the pension accumulation fund, and the maintenance of ~~annuity reserves~~ accumulated  
 3 contributions in the annuity ~~reserve~~ savings fund, as provided for in this chapter, and the payment of all  
 4 ~~annuities, pensions~~ retirement allowances, refunds, and other benefits granted under the retirement system  
 5 are obligations of the state of Montana."

6

7           **Section 7.** Section 19-20-208, MCA, is amended to read:

8           **"19-20-208. Duties of employer.** Each employer shall:

9           (1) pick up the contribution of each employed member ~~employed by him~~ at the rate prescribed by  
 10 19-20-602 and transmit the contribution each month to the ~~secretary~~ executive director of the retirement  
 11 board;

12           (2) ~~pay~~ transmit to the ~~secretary~~ executive director of the retirement board the employer's  
 13 contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted ~~to the~~  
 14 ~~secretary~~;

15           (3) keep records and, as required by the retirement board, furnish information to the board that is  
 16 required in the discharge of the board's duties;

17           (4) upon the employment of a person who is required to become a member of the retirement  
 18 system, inform ~~him~~ the person of ~~his~~ the rights and obligations relating to the retirement system;

19           (5) whenever applicable, inform an employee of ~~his~~ the right to elect to participate in the optional  
 20 retirement program under Title 19, chapter 21;

21           (6) at the request of the retirement board, certify the names of all persons who are eligible for  
 22 membership or who are members of the retirement system; ~~and~~

23           (7) notify the retirement board of the employment of a person eligible for membership and forward  
 24 ~~his~~ the person's membership application to the board;

25           (8) if the employer has converted to earned compensation amounts excluded from earned  
 26 compensation, for each retiring member, certify to the board the amounts reported to the system in each  
 27 of the 5 years preceding the member's retirement."

28

29           **Section 8.** Section 19-20-305, MCA, is amended to read:

30           **"19-20-305. Alternate payees -- family law orders.** (1) A participant in a retirement system may



1 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, retiree, or an actual or potential beneficiary, survivor, or  
4 contingent annuitant of the retirement system designated pursuant to this chapter; and

5 (b) "family law order" means a certified copy of a judgment, decree, or order of a court of with  
6 competent jurisdiction ~~under Title 40~~ concerning child support, parental support, spousal maintenance, or  
7 marital property rights that includes a transfer of all or a portion of a participant's payment rights in a  
8 retirement system to an 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 survive  
 3 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 ~~(7) A court may not enter a family law order relating to payments by the system unless terms of~~  
 10 ~~the proposed order have been approved by the board~~ EACH FAMILY LAW ORDER ESTABLISHING A FINAL  
 11 OBLIGATION CONCERNING PAYMENTS BY THE RETIREMENT SYSTEM MUST CONTAIN A STATEMENT  
 12 THAT THE ORDER IS SUBJECT TO REVIEW AND APPROVAL BY THE BOARD."

13

14 **Section 9.** Section 19-20-409, MCA, is amended to read:

15 **"19-20-409. Transfer of service credits and contributions from public employees' retirement**  
 16 **system.** (1) An active member may at any time before retirement make a written election with the  
 17 retirement board to qualify in the teachers' retirement system all of the member's previous creditable  
 18 service in the public employees' retirement system. The amount that must be paid to the retirement system  
 19 to qualify this service under this section is the sum of subsections (2) and (3).

20 (2) ~~In addition to the amounts directly paid or transferred by the member under subsection (3), the~~  
 21 The public employees' retirement system shall transfer to the teachers' retirement system an amount equal  
 22 to 72% of the amount payable by the member.

23 (3) The member shall pay either directly or by transferring contributions on account with the public  
 24 employees' retirement system an amount equal to the member's accumulated contributions at the time that  
 25 active membership was terminated, plus accrued interest. Interest must be calculated from the date of  
 26 termination until payment is received by the retirement system, based on the interest tables in use by the  
 27 public employees' retirement system.

28 (4) A member who qualifies service from the public employees' retirement system in the teachers'  
 29 retirement system must complete 5 years of membership service in the teachers' retirement system to  
 30 qualify or purchase military service, out-of-state teaching service, employment while on leave, and private

1 school employment.

2 (5) The retirement board shall determine the service credits that may be transferred.

3 (6) If an active member who also has creditable service in the public employees' retirement system  
4 before becoming a member of the teachers' retirement system dies before qualifying this service in the  
5 teachers' retirement system and if the member's service credits from both systems, when combined, entitle  
6 the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers'  
7 retirement system. Before payment of the death benefit, the public employees' retirement board must  
8 transfer to the teachers' retirement system the contributions necessary to qualify this service in the  
9 teachers' retirement system as provided in subsections (2) and (3).

10 (7) If the retirement board determines that an individual's membership was erroneously classified  
11 and reported to the public employees' retirement system, the member's accumulated contributions and  
12 service, together with employer contributions plus interest, must be transferred to the teachers' retirement  
13 system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605,  
14 respectively, are the liability of the employee and the employing entity where the error occurred,  
15 respectively. For the period of time that the employer contributions are held by the public employees'  
16 retirement system, interest paid on employer contributions transferred under this subsection must be  
17 calculated at the short-term investment pool rate earned by the board of investments in the fiscal year  
18 preceding the transfer request."

19

20 **Section 10.** Section 19-20-412, MCA, is amended to read:

21 **"19-20-412. Election to purchase additional service.** (1) (a) Except as provided in subsection (3),  
22 a member with 5 years or more of creditable service may make a written election with the retirement board  
23 to purchase, for the purpose of calculating the member's retirement allowance, 1 year of additional service  
24 for:

25 (i) each 5 years of service on which contributions have been made as required under the provisions  
26 of 19-20-602; and

27 (ii) each 5 years of membership service as defined in Title 19, chapter 3, for which contributions  
28 have been made as required under the provisions of 19-20-409.

29 (b) A maximum of 5 years of additional service may be purchased under this section. A part-time  
30 member may purchase additional service on a prorated basis.

1 (2) (a) To purchase additional service under this section, a member shall contribute, in a lump-sum  
2 payment or in installments as agreed upon by the member and the retirement board, an amount equal to:

3 (i) the combined employer and employee rate on July 1, 1989, or the combined rate in effect at  
4 the time the member is eligible to purchase the service, whichever date is later, multiplied by the member's  
5 earned compensation for full-time service as provided in subsection (2)(b); and

6 (ii) interest at a rate of 8% compounded annually from July 1, 1989, or from the date at which the  
7 member is eligible to purchase the service, whichever date is later.

8 (b) The earned compensation used in calculating the cost of purchasing additional service under  
9 this section is:

10 (i) for the first year of service purchased, the member's earned compensation for full-time service  
11 for the 1988-89 school year or for the member's fifth year of service, whichever year is later;

12 (ii) for the second year of service purchased, the member's earned compensation for full-time  
13 service for the 1988-89 school year or for the member's 10th year of service, whichever year is later;

14 (iii) for the third year of service purchased, the member's earned compensation for full-time service  
15 for the 1988-89 school year or for the member's 15th year of service, whichever year is later;

16 (iv) for the fourth year of service purchased, the member's earned compensation for full-time  
17 service for the 1988-89 school year or for the member's 20th year of service, whichever year is later; and

18 (v) for the fifth year of service purchased, the member's earned compensation for full-time service  
19 for the 1988-89 school year or for the member's 25th year of service, whichever year is later.

20 (3) A member who became a member prior to July 1, 1989, and who is eligible to purchase  
21 creditable service under 19-3-504, 19-3-510, 19-3-512, 19-3-513, 19-20-402, 19-20-403, 19-20-408,  
22 19-20-410, or 19-20-411 may not purchase additional service under this section unless the member elects  
23 in writing to:

24 (a) waive eligibility to purchase creditable service under sections referred to in subsection (3); and

25 (b) apply the accumulated contributions made under sections referred to in subsection (3) to the  
26 cost of additional service purchased under this section.

27 (4) Additional service purchased under this section may not be used to qualify a member for service  
28 retirement."

29

30 **Section 11.** Section 19-20-503, MCA, is amended to read:

1           **"19-20-503. Transfer of dormant ~~savings account or unclaimed accounts.~~ (1)** The retirement board  
 2 may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the  
 3 pension accumulation fund if the account has been dormant for a period of 7 years. ~~No~~ A right of the  
 4 member may not be jeopardized by ~~such~~ the transfer, and the amount ~~shall~~ must be transferred back to the  
 5 member's annuity savings account upon ~~his~~ the member's request.

6           (2) Retirement benefits must be claimed within 5 years of the date of the member's death. If the  
 7 named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member's  
 8 account balance reverts to the pension trust fund."

9  
 10           **Section 12.** Section 19-20-602, MCA, is amended to read:

11           **"19-20-602. Annuity savings fund -- member's contribution.** The annuity savings fund is a fund  
 12 in which the contributions for the members to provide for their ~~annuities~~ retirement allowance or benefits  
 13 must be accumulated in individual accounts for each member. The normal contribution of each member is  
 14 7.044% of the member's earned compensation. Contributions to and payments from the annuity savings  
 15 fund must be made in the following manner:

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

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

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

28           (d) The deductions must be made notwithstanding that the minimum compensation provided by  
 29 law for a member may be reduced by the deductions. Each member is considered to consent to the  
 30 deductions prescribed by this section, and payment of salary or compensation less the deductions is a

1 complete discharge of all claims for the services rendered by the member during the period covered by the  
2 payment, except as to the benefits provided by the retirement system.

3 (2) In addition to the normal contributions and subject to the approval of the retirement board, a  
4 member may redeposit in the annuity savings fund, by a single payment or by an increased rate of  
5 contribution, an amount equal to accumulated contributions that the member has previously withdrawn,  
6 plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

7 (3) The accumulated contributions of a member withdrawn by the member or paid to the member's  
8 estate or to the member's designated beneficiary in event of the member's death must be paid from the  
9 annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be  
10 transferred from the annuity savings fund to the pension accumulation fund."

11

12 **Section 13.** Section 19-20-603, MCA, is amended to read:

13 "**19-20-603. Withdrawal of accumulated contributions -- options.** ~~Any~~ An inactive member electing  
14 to do so or ~~any~~ a person whose membership terminates without a prospect or anticipation that the member  
15 will return to work for an employer within 60 days of termination may withdraw the member's ~~or person's~~  
16 accumulated contributions from the annuity ~~account~~ savings fund in the retirement system in accordance  
17 with the following provisions:

18 (1) An inactive member under the provisions of ~~subsection (1) or (3) of 19-20-303~~ (1) or (3) may  
19 elect, without right of revocation, to withdraw the member's accumulated contributions. If the member  
20 does not withdraw the accumulated contributions, the member remains an inactive member of the  
21 retirement system with the right to qualify for its benefits.

22 (2) Upon recovery from a disabling illness or separation from the armed forces, ~~any~~ a person  
23 qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's  
24 accumulated contributions unless the member returns to active membership.

25 (3) ~~Any~~ A person whose membership terminates under the provisions of 19-20-304(4) may  
26 withdraw the person's accumulated contributions.

27 (4) Upon written request, a terminating member may have the payment of ~~the~~ all or any portion  
28 of the member's accumulated contributions ~~split. The tax-deferred portion of the contributions may be paid~~  
29 ~~directly to an individual retirement account or other~~ rolled over or transferred into another qualified plan  
30 designated by the member, ~~and the other.~~ The portion not rolled over or transferred must be paid directly

1 to the terminating member. The board shall provide forms for making the written request. The terminating  
 2 member is responsible for correctly designating an account or plan eligible to receive the tax-deferred  
 3 amount in order to continue the tax-deferred status of the amount."

4  
 5 **Section 14.** Section 19-20-605, MCA, is amended to read:

6 **"19-20-605. Pension accumulation fund -- employer's contribution.** The pension accumulation fund  
 7 is the fund in which the reserves for payment of ~~pensions and annuities~~ retirement allowances and benefits  
 8 must be accumulated and from which ~~pensions, annuities, retirement allowances~~ and benefits must be paid  
 9 to ~~or on account of beneficiaries credited with prior service~~ retirees or their beneficiaries. Contributions to  
 10 and payments from the pension accumulation fund must be made as follows:

11 (1) Each employer shall pay into the pension accumulation fund an amount equal to 7.47% of the  
 12 earned compensation of each member employed during the whole or part of the preceding payroll period.

13 (2) If the employer is a district or community college district, the trustees shall budget and pay for  
 14 the employer's contribution under the provisions of 20-9-501.

15 (3) If the employer is the superintendent of public instruction, a public institution of the state of  
 16 Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the  
 17 legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's  
 18 contribution.

19 (4) If the employer is a county, the county commissioners shall budget and pay for the employer's  
 20 contribution in the manner provided by law for the adoption of a county budget and for payments under  
 21 the budget.

22 (5) All interest and other earnings realized on the money of the retirement system ~~shall~~ must be  
 23 credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity  
 24 savings fund ~~shall~~ must be transferred to that fund from the pension accumulation fund.

25 (6) ~~All pensions, annuities, and benefits must be paid from the pension accumulation fund.~~

26 (7) The retirement board may, in its discretion, transfer from the pension accumulation fund an  
 27 amount necessary to cover expenses of administration."

28  
 29 **Section 15.** Section 19-20-702, MCA, is amended to read:

30 **"19-20-702. Optional allowances.** (1) Until the first payment on account of any benefit becomes

1 normally due, any member may elect to receive one of the optional allowances described in subsection (2)  
2 in lieu of the normal form of retirement allowance, which is provided for in ~~part 8 of this chapter and~~  
3 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's  
4 election to receive an optional allowance is void and the member's death will be considered as that of an  
5 active member.

6 (2) An optional allowance is the actuarial equivalent of the member's service retirement or disability  
7 retirement allowance at the time of the member's retirement effective date and provides an allowance  
8 payable to the member throughout the member's lifetime and, upon the member's death, an allowance  
9 payable to the person that the member nominated by written designation, duly acknowledged and filed with  
10 the retirement board at the time of the member's retirement, in accordance with one of the following  
11 options:

12 (a) Option A--the optional allowance will be paid to the member throughout the member's lifetime  
13 and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

14 (b) Option B--the optional allowance will be paid to the member throughout the member's lifetime,  
15 and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime  
16 of the member's designated beneficiary.

17 (c) Option C--the optional allowance will be paid to the member throughout the member's lifetime,  
18 and upon the member's death, two-thirds of the optional allowance will be continued throughout the  
19 lifetime of the member's designated beneficiary.

20 (d) ~~Option D--some other benefit will be paid either to the member or the member's surviving~~  
21 ~~designated beneficiary in accordance with provisions approved by the retirement board~~ Period certain and  
22 life--a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever  
23 is greater.

24 (i) The member shall elect one of the following certain time periods:

25 (A) 10 years if the member is 75 years of age or younger at the time of retirement; or

26 (B) 20 years if the member is 65 years of age or younger at the time of retirement.

27 (ii) At the time of retirement, the member shall file with the board a written nomination of  
28 beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless  
29 limited by a family law order, the nominated beneficiary may be changed by the member at any time by  
30 filing with the board a written notice designating different beneficiaries.



1           (3) (a) Upon written request to the retirement board, a retired member whose effective date of  
 2 retirement is before October 1, 1993, and who is receiving an optional retirement allowance may designate  
 3 a different beneficiary, select a different option, or convert the member's optional retirement allowance to  
 4 a regular retirement or disability allowance if:

5           (i) the original beneficiary has died; or

6           (ii) the member has been divorced from the original beneficiary and the original beneficiary has not  
 7 been granted the right to receive the optional retirement allowance as part of the divorce settlement.

8           (b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement  
 9 or disability allowance to reflect the change.

10           (4) Effective on the first of the month following ~~receipt of notification of~~ the death of a person  
 11 nominated as the designated beneficiary under subsection ~~(2)~~ (2)(a), (2)(b), or (2)(c), any optional retirement  
 12 allowance that is effective after October 1, 1993, will revert to the full normal form of retirement allowance  
 13 available at the time of retirement. The normal form of retirement allowance available must be increased  
 14 by the value of any postretirement adjustments received by the member since the effective date of  
 15 retirement. The retired member may, within 180 days 18 MONTHS of the death of the designated  
 16 beneficiary, file a written application with the board to designate a different beneficiary and to select an  
 17 actuarially equivalent optional allowance. The optional allowance is effective on the first day of the month  
 18 following receipt of the retiree's application."

19  
 20           **Section 16.** Section 19-20-703, MCA, is amended to read:

21           "**19-20-703. Payments to be monthly.** (1) All pensions and annuities shall retirement allowances  
 22 must be paid in equal monthly installments.

23           (2) The retirement allowance may commence:

24           (a) no earlier than the first day of the month following the member's termination date or on the first  
 25 day of the month following the date when the member first becomes eligible, whichever date is later; or

26           (b) if requested by the inactive member in writing:

27           (i) on the first day of a later month; or

28           (ii) on the first day of the month following the member's 60th birthday."

29  
 30           **Section 17.** Section 19-20-706, MCA, is amended to read:

1           **"19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305, the  
 2 ~~pensions, annuities, retirement allowances~~ or any other benefits accrued or accruing to any person under  
 3 the provisions of the retirement system and the accumulated contributions and cash and securities in the  
 4 various funds of the retirement system are:

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

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

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

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

12          (3) unassignable except as specifically provided in this chapter."  
 13

14          **Section 18.** Section 19-20-711, MCA, is amended to read:

15          **"19-20-711. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a  
 16 ~~member retiree~~ or beneficiary is eligible to receive a postretirement adjustment as provided in 19-20-713  
 17 if ~~he~~ the retiree is receiving a:

18          (a) service retirement allowance ~~and is 55 years of age or older on or before June 30 in the year~~  
 19 ~~that the postretirement adjustment is made;~~ or

20          (b) disability or survivorship allowance.

21          (2) A ~~member retiree~~ or beneficiary is ineligible to receive a postretirement adjustment under  
 22 subsection (1) unless ~~he~~ the retiree or beneficiary has been receiving a monthly service, disability, or  
 23 survivorship allowance for at least 24 consecutive months on or before June 30 in the year that the  
 24 adjustment is made."  
 25

26          **Section 19.** Section 19-20-712, MCA, is amended to read:

27          **"19-20-712. Funding for postretirement adjustment -- reserve fund.** (1) At the end of each fiscal  
 28 year, the board shall determine the total investment income ~~earned~~ minus unrealized gains or losses on the  
 29 retirement fund for that fiscal year. From this amount, the board shall subtract the:

30          (a) ~~actuarial amount required to fund the retirement system for the fiscal year~~ amount equivalent

1 to the actuarially required investment yield; and

2 (b) retirement system's administrative and investment expenses for the fiscal year.

3 (2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of  
4 investment income earned on that portion of the retirement fund balance representing retired members.

5 (b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

6 (3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use  
7 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment  
8 to eligible ~~members~~ retirees or beneficiaries under 19-20-713.

9 (4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement  
10 adjustment of at least \$1 under 19-20-713, an adjustment may not be made in that calendar year.

11 (5) The amount available for payment of the postretirement allowance is limited to an amount that  
12 would provide a percentage increase in the average service, disability, or survivorship allowance of all  
13 eligible ~~members~~ retirees, when combined with the postretirement adjustment, that is equal to or less than  
14 the percentage increase for the previous calendar year in the annual average consumer price index for urban  
15 wage earners and workers compiled by the bureau of labor statistics, United States department of labor,  
16 or its successor agency."

17

18 **Section 20.** Section 19-20-713, MCA, is amended to read:

19 **"19-20-713. Payment and amount of postretirement adjustment.** (1) Effective January 1 of each  
20 year that funds are available under 19-20-712, a ~~member~~ retiree or beneficiary eligible under 19-20-711  
21 shall receive a postretirement adjustment in the form of a monthly benefit payable for life.

22 (2) The board shall calculate the amount of the postretirement allowance payable to an eligible  
23 ~~member~~ retiree or beneficiary by:

24 (a) dividing the amount available under 19-20-712(3) for payment of the postretirement allowance  
25 by the total accumulated years of service for all eligible ~~members~~ retirees and beneficiaries;

26 (b) multiplying the quotient obtained in subsection (2)(a) by the ~~member's~~ retiree's total years of  
27 service;

28 (c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly ~~annuity~~  
29 retirement allowance from actuarial tables adopted by the board; and

30 (d) applying the provisions contained in subsections (3) and (4).

1 (3) If a ~~member~~ retiree had elected to receive an optional retirement allowance, the amount of ~~his~~  
2 the retiree's postretirement allowance must be adjusted by the appropriate optional factor.

3 (4) If more than one beneficiary is receiving a ~~member's~~ retiree's retirement allowance, the  
4 postretirement adjustment must be divided in the same manner as the ~~member's~~ retiree's retirement  
5 allowance."  
6

7 **Section 21.** Section 19-20-715, MCA, is amended to read:

8 "**19-20-715. Compensation limit.** (1) Compensation in excess of the limitations set forth in section  
9 401(a)(17) of the Internal Revenue Code must be disregarded for individuals who are not eligible employees.  
10 The limitation on compensation for eligible employees may not be less than the amount that was allowed  
11 to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible  
12 employee is an individual who was a member in the retirement system prior to July 1, 1996.

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

18 (3) Earned compensation in excess of the amount specified in subsection (2) is considered  
19 termination pay and must be included in the calculation of average final compensation as provided in  
20 [section 2]. "

21

22 **Section 22.** Section 19-20-801, MCA, is amended to read:

23 "**19-20-801. Eligibility for ~~superannuation~~ service retirement.** A member who has at least 5 full  
24 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained  
25 the age of 60 or has been credited with full-time or part-time service in 25 or more years may retire from  
26 service if ~~he~~ the member has terminated employment in all positions from which the member is eligible to  
27 retire and files with the retirement board ~~his~~ a written application setting forth the fact of ~~his~~ the member's  
28 retirement."  
29

30

**Section 23.** Section 19-20-804, MCA, is amended to read:

1           "19-20-804. Allowance for ~~superannuation~~ service retirement. (1) Upon ~~superannuation~~  
2 ~~retirement, a termination, an eligible~~ member ~~shall~~ must receive a retirement allowance ~~consisting of a~~  
3 ~~pension which, together with an annuity, provides a retirement allowance~~ equal to one-sixtieth of ~~his~~ the  
4 member's average final compensation, ~~as limited by 19-20-715,~~ multiplied by the sum of the number of  
5 years of creditable service, service transferred under 19-20-409, and additional service purchased under  
6 19-20-412.

7           (2) ~~Any~~ Except as provided in subsection (3), a retired member may be employed as a part-time  
8 or substitute teacher in Montana and may earn, without loss of retirement benefits, an amount not to  
9 exceed the greater of:

10           (a) one-third of the sum of ~~his~~ the member's average final compensation plus normal annual salary  
11 increases for teaching personnel employed by the school district, state agency, political subdivision, or  
12 university unit that employed the member at the time of retirement; or

13           (b) one-third of the median of the average final compensation for members retired during the  
14 preceding fiscal year as determined by the retirement board.

15           (3) If an early-retired member under 19-20-802 is reemployed with the same employer within 30  
16 days from the member's effective date of retirement or if the early-retired member is guaranteed  
17 reemployment with the same employer, the member must be considered to have continued in the status  
18 of an active member and not to have separated from service. Any retirement allowance payments received  
19 by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and  
20 the retirement allowance must be terminated."

21  
22           **Section 24.** Section 19-20-902, MCA, is amended to read:

23           "19-20-902. Allowance for disability retirement. (1) Upon retirement for disability, a member must  
24 receive a disability retirement allowance equal to the greater of:

25           ~~(1)(a)~~ (a) one-sixtieth of the member's average final compensation multiplied by the sum of the number  
26 of years of creditable service, service transferred under 19-20-409, and additional service purchased under  
27 19-20-412, ~~if the retirement allowance exceeds one-fourth of the member's average final compensation;~~  
28 or

29           ~~(2)(b)~~ (b) a pension that, together with the member's annuity, provides a total retirement allowance  
30 ~~equal to~~ one-fourth of the member's average final compensation.

1           (2) The earned compensation in the year of termination that is included in the calculation of average  
 2 final compensation of a member who is awarded a disability retirement allowance prior to the completion  
 3 of a full year is the compensation, pay, or salary that the member would have received under the member's  
 4 contract had the member completed the full year. Any termination pay received by the member is limited  
 5 to the amount actually paid and is not the amount that the member would have earned had the member  
 6 completed the full year."

7  
 8           **Section 25.** Section 19-20-903, MCA, is amended to read:

9           **"19-20-903. Medical examination of disability retiree.** (1) Once each year during the first 5 years  
 10 following the retirement of a member on a disability retirement allowance and once in every 3-year period  
 11 thereafter, the retirement board may require ~~and, upon the beneficiary's application, shall permit~~ a disability  
 12 ~~beneficiary benefit recipient~~ who has not yet attained the age of 60 to undergo a medical examination by  
 13 a physician or physicians designated by the retirement board. The examination ~~shall~~ must be made at the  
 14 place of residence of the ~~beneficiary benefit recipient~~ or other place mutually agreed upon. Based on the  
 15 examination, the board shall determine whether the disabled member is unable, by reason of physical or  
 16 mental incapacity, to perform the essential elements of the position held by the member when the member  
 17 retired. If the board determines that the member is not incapacitated, the member's retirement benefit must  
 18 be canceled. If the member disagrees with the board's determination, the member may request the board  
 19 to reconsider its action. The request for reconsideration must be made in writing within 60 days after the  
 20 receipt of the notice of the status change.

21           (2) A member whose disability retirement benefit is canceled because the board has determined  
 22 that the member is no longer incapacitated must be given preference by the member's former employer for  
 23 the position held at the time of retirement or for a comparable position that becomes available within 1 year  
 24 of cancellation of the disability retirement. The member may agree to accept an offer of employment by an  
 25 employer. Employment in any capacity by an employer terminates any right granted by this section. The  
 26 fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty  
 27 that the former employee may have or claim to have. This section does not affect any requirement for the  
 28 former employee to meet or to be able to meet professional certification and licensing standards unrelated  
 29 to the previous disability, otherwise necessary for reinstatement to duty.

30           ~~(2)(3) Should~~ if a disability ~~beneficiary benefit recipient~~ who has not yet attained the age of 60

1 ~~refuse~~ refuses to submit to a medical examination as required in subsection (1), ~~his~~ the recipient's  
 2 allowance may be discontinued until ~~his~~ the withdrawal of ~~such~~ the refusal, ~~and should his.~~ If a refusal  
 3 ~~continue~~ continues for 1 year, all ~~his~~ a rights in and to ~~his~~ a disability pension may be revoked by the  
 4 retirement board."

5  
 6 **Section 26.** Section 19-20-904, MCA, is amended to read:

7 **"19-20-904. Adjustment of allowance.** ~~(1) If~~ (1) (a) Except as provided by subsection (1)(b), if  
 8 a retiree receiving a disability ~~beneficiary~~ retirement allowance is engaged in or is able to engage in a gainful  
 9 occupation paying more than the difference between the ~~beneficiary's~~ retiree's retirement allowance and  
 10 the ~~beneficiary's~~ retiree's average final compensation or the difference between the median salary of those  
 11 members retired during the preceding fiscal year and the ~~beneficiary's~~ retiree's retirement allowance,  
 12 whichever is greater, the retirement allowance must be reduced to an amount that, together with the  
 13 amount earnable by the ~~beneficiary~~ retiree, is equal to the ~~beneficiary's~~ retiree's average final compensation  
 14 or the median salary of those members retired during the preceding fiscal year, whichever is greater.

15 (b) If a disabled retiree is reemployed with the same employer within 30 days from the member's  
 16 effective date of retirement or if the retired member is guaranteed reemployment with the same employer,  
 17 the member must be considered to have continued in the status of an active member and not to have  
 18 separated from service. Any retirement allowance payments received by the member must be repaid to  
 19 the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be  
 20 terminated.

21 (2) If the ~~beneficiary's~~ disabled retiree's earning capacity is changed later, the ~~beneficiary's~~  
 22 retirement allowance may be further modified, but the new allowance may not exceed the retirement  
 23 allowance originally granted or an amount that, when added to the amount earnable by the ~~beneficiary~~  
 24 retiree, equals the ~~beneficiary's~~ retiree's average final compensation.

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

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

1           **Section 27.** Section 19-20-905, MCA, is amended to read:

2           **"19-20-905. Cancellation of allowance and restoration of membership.** (1) If a ~~disability beneficiary~~  
 3 ~~under age 60 is restored to active service at a compensation not less than his average final compensation,~~  
 4 ~~his disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements~~  
 5 ~~of active membership, as provided under 19-20-302, the retiree's retirement allowance shall must cease~~  
 6 ~~and he.~~ If the retiree is employed by an employer covered under this chapter, the retiree shall again become  
 7 an active member of the retirement system. Any prior service certificate on the basis of which he the  
 8 member's service was computed at the time of his the member's disability retirement shall must be restored  
 9 to full force, and upon his the member's subsequent retirement, he shall the member must be credited with  
 10 such the prior service and all his subsequent service as a member.

11           (2) If ~~he the member~~ is restored to active ~~service membership~~ on or after the attainment of the age  
 12 of 55 years, ~~his pension the member's retirement allowance~~ upon subsequent retirement may not exceed  
 13 the ~~pension retirement allowance~~ that ~~he the member~~ would have received had ~~he the member~~ remained  
 14 in service during the period of ~~his the member's~~ previous retirement or the sum of the ~~pension which he~~  
 15 ~~retirement allowance that the member was receiving immediately prior to his the member's last restoration~~  
 16 ~~to service and the pension retirement allowance that he the member would have received on account of~~  
 17 ~~his the member's service since his the member's last restoration had he the member entered service at that~~  
 18 ~~time as a new member."~~

19

20           **Section 28.** Section 19-20-1001, MCA, is amended to read:

21           **"19-20-1001. Allowances for death of member.** (1) If a member dies before retirement, ~~his the~~  
 22 ~~member's accumulated contributions shall must be paid to his the member's estate or such to a person as~~  
 23 ~~he the member~~ may have nominated by a written designation in a manner prescribed by the board and filed  
 24 with the retirement board prior to ~~his the member's death in the manner prescribed by the board.~~

25           (2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason  
 26 of service for a retirement benefit, the nominated beneficiary ~~nominated by the deceased member~~ may elect  
 27 to receive a ~~monthly life annuity retirement allowance.~~ The monthly life annuity shall retirement allowance  
 28 must be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, in the same  
 29 manner as if the member elected option A provided for in 19-20-702(2)(a).

30           (b) In the event that payments made to ~~an annuitant~~ a recipient do not equal the amount of the



1 member's accumulated contributions ~~prior to~~ before the ~~annuitant's~~ member's death, the difference  
 2 between the total ~~annuity~~ retirement allowance payments made and the amount of the accumulated  
 3 contributions ~~shall~~ at the time of the member's death must be paid to the beneficiary.

4 (3) If the deceased member had 5 or more years of creditable service and was an active member  
 5 in the state of Montana within 1 year ~~prior to his~~ before the member's death, a lump-sum death benefit of  
 6 \$500 is payable to ~~his~~ the member's designated beneficiary.

7 (4) If a deceased member had 5 or more years of creditable service and was an active member in  
 8 the state of Montana within 1 year prior to ~~his~~ the member's death, the sum of \$200 ~~per a~~ month shall  
 9 must be paid to each minor child of the deceased member until ~~such~~ the child reaches ~~his 18th birthday~~  
 10 18 years of age."

11  
 12 **Section 29.** Section 19-20-1002, MCA, is amended to read:

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

15 (2) In the event that payments made to ~~an annuitant~~ a benefit recipient do not equal the amount  
 16 of the member's accumulated contributions ~~prior to~~ before the ~~annuitant's death~~ member's retirement, the  
 17 difference between the total retirement allowance paid and the amount of the accumulated contributions  
 18 ~~shall~~ must be paid to the beneficiary.

19 (3) If a deceased member had 5 or more years of creditable service and was retired at the time of  
 20 ~~his~~ death, the sum of \$200 ~~per a~~ month shall must be paid to each minor child of the deceased ~~member~~  
 21 retiree until ~~such~~ the child reaches ~~his 18th birthday~~ 18 years of age."

22  
 23 **NEW SECTION. Section 30. Codification instruction.** (1) [Section 1] is intended to be codified as  
 24 an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to  
 25 [section 1].

26 (2) [Sections 2 and 4] are intended to be codified as an integral part of Title 19, chapter 20, part  
 27 7, and the provisions of Title 19, chapter 20, part 7, apply to [sections 2 and 4].

28 (3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 20, part 1, and the  
 29 provisions of Title 19, chapter 20, part 1, apply to [section 3].

30

1           **NEW SECTION. Section 31. Coordination instruction.** If \_\_\_ Bill No. \_\_\_ [LC 0553] is passed and  
2 approved and if it includes sections that amend 19-20-711 through 19-20-713, then [sections 18 through  
3 20 of this act], amending 19-20-711 through 19-20-713, are void.

4

5           **NEW SECTION. Section 32. Retroactive applicability.** [Section 9] applies retroactively, within the  
6 meaning of 1-2-109, to all occurrences on or after January 1, 1995.

7

8           **NEW SECTION. Section 33. Effective date.** [This act] is effective on passage and approval.

9

-END-