



AN ACT GENERALLY REVISING ADMINISTRATIVE AND FEDERAL TAX QUALIFICATION PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; REVISING PROVISIONS RELATED TO THE CORRECTION OF ERRORS, RECOVERY OF AMOUNTS DUE RESULTING FROM ERRORS, CREDITABLE SERVICE, OPTIONAL RETIREMENT ALLOWANCES, COMPENSATION LIMITATIONS, MAXIMUM CONTRIBUTIONS, DIFFERENTIAL WAGE PAYMENTS, DISABILITY BENEFITS, DEATH BENEFITS, AND GROUP INSURANCE PREMIUM WITHHOLDING; AMENDING SECTIONS 19-20-401, 19-20-402, 19-20-403, 19-20-404, 19-20-405, 19-20-408, 19-20-409, 19-20-410, 19-20-426, 19-20-427, 19-20-702, 19-20-715, 19-20-716, 19-20-718, 19-20-802, 19-20-904, 19-20-1001, AND 19-20-1101, MCA; REPEALING SECTION 19-20-705, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Definitions. As used in [sections 1 through 11], the following definitions apply:

(1) "Amount owed" means the total amount of overpaid benefits or unpaid contributions plus accrued interest as provided in [section 6] and costs and fees awarded as provided in [section 11].

(2) "Benefit recipient" means a benefit recipient as defined in 19-20-101, an alternate payee, or any other person or entity that is entitled to a future payment or that received an overpayment on behalf of the member.

(3) "Error" means any of the following, whether or not intended, that has resulted in or may result in the retirement system paying more or less on behalf of a member than is authorized to be paid or in the retirement system receiving more or less in contributions than is required to be paid to the retirement system pursuant to plan terms:

- (a) a clerical mistake;
 - (b) a failure to fully and correctly perform a required act or provide required information;
 - (c) an assertion or other representation of fact or circumstance that is not complete and accurate; or
 - (d) an incorrect understanding, construction, or application of plan terms or other applicable law or policy.
- (4) "Overpaid benefits" or "overpayment" means the total amount of all monthly retirement benefits or

other amounts paid by the retirement system on behalf of a member due to an error.

(5) "Unpaid contributions" means the total amount of all monthly contributions or other contribution amounts not received by the retirement system due to an error.

Section 2. Correction of errors. The retirement system shall correct errors and, as far as practicable, shall:

- (1) in the case of underpaid benefits, adjust future benefit payments so the actuarial equivalent of the benefit to which the member or benefit recipient is correctly entitled will be paid;
- (2) in the case of overpaid contributions, refund the excess contributions;
- (3) in the case of unpaid contributions, recover the amounts owed for unpaid contributions; and
- (4) in the case of overpaid benefits, recover the amounts owed for overpayment.

Section 3. Recovery of unpaid employer contributions. An amount owed for unpaid employer contributions must be paid to the retirement system by the employer and is not subject to reduction for any reason.

Section 4. Recovery of unpaid employee contributions. (1) An amount owed for unpaid employee contributions must be paid to the retirement system by the employer if, at the time the contributions were due, the employer was legally required to pick up and remit the contributions to the retirement system on behalf of the member pursuant to 19-20-602(3)(a) and the unpaid contributions resulted from or were furthered by the employer's error.

(2) An amount owed for unpaid employee contributions not payable by the employer under subsection (1) must be paid to the retirement system by the member or benefit recipient.

Section 5. Recovery of overpayments. (1) Subject to subsection (2), an amount owed to the retirement system for overpaid benefits must be recovered as follows:

(a) from any retirement benefit or other amount payable by the retirement system to a benefit recipient;

or

(b) through repayment by a benefit recipient who received an overpayment or by the estate of the benefit

recipient.

(2) If an overpayment resulted from or was furthered by an employer's error, the employer is jointly and severally liable for all amounts owed to the retirement system for the overpayment.

Section 6. Interest on overpayments and unpaid contributions. (1) Except as provided in subsection (2), overpaid benefits and unpaid contributions accrue interest at the retirement system's actuarially assumed annual rate of return, compounded monthly. Interest accrues beginning on the date that the first erroneous payment was made or that the contributions were first due and continues to accrue until the amount owed to the retirement system is fully paid.

(2) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system, the amount owed may not include interest.

Section 7. Notices required -- initial notice -- final staff determination. (1) (a) Before taking action to correct an error or recover overpaid benefits or unpaid contributions, the retirement system shall provide a written initial notice to any person or entity from whom the overpayment or unpaid contributions may be recovered.

(b) The initial notice must:

(i) specify the grounds for the retirement system's initial determination that an error has occurred;

(ii) specify, to the extent practicable, the amount owed for overpaid benefits or unpaid contributions;

(iii) identify additional documentation or information, if any, required to be provided to the retirement system for a final staff determination; and

(iv) provide an opportunity for the noticed party or parties to submit additional documentation or information they believe is relevant to the retirement system's determination.

(2) (a) Unless additional time is required for good cause, the retirement system shall issue a final staff determination within 180 days after the date the initial notice was issued.

(b) The final staff determination must specify the process required for a party to appeal the final staff determination to the retirement board.

(3) Notice provided pursuant to this section may be provided to multiple persons or entities as a standardized notice directed to multiple recipients.

Section 8. Statute of limitations. (1) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system, the retirement system may recover amounts owed for overpayments or unpaid contributions only for benefits or other amounts actually paid by the retirement system or for contributions that were actually due in the timeframe beginning 24 months prior to the date on which the retirement system issues an initial notice and ending when all amounts owed for overpayments or unpaid contributions are fully paid.

(2) If overpaid benefits or unpaid contributions resulted solely or partially from an error made by an employer, a member, or a benefit recipient, the retirement system may recover all amounts owed for the overpayment or unpaid contributions beginning on the date that the first erroneous payment was made or that contributions were first due. The retirement system may not recover amounts owed under this subsection unless the retirement system issues an initial notice no later than 24 months after the date on which the last payment of a retirement benefit or other amount was made by the retirement system on behalf of the member.

(3) No other statute of limitations or legal or equitable defense to the application of a statute of limitations may be applied to shorten the timeframes in which or for which the retirement system may seek recovery of amounts owed for overpayments or unpaid contributions.

Section 9. Recovery methods. (1) The retirement system may use any or all of the following methods to recover amounts owed from a member or benefit recipient:

- (a) accept a lump-sum payment;
- (b) accept installment payments;
- (c) accept a rollover payment from a member;
- (d) actuarially adjust monthly benefit payments;
- (e) withhold up to 50% of each monthly benefit payment;
- (f) withhold up to 100% of a lump-sum distribution; or
- (g) withhold up to 100% of the death benefit payable under 19-20-1001(3) or 19-20-1002(1).

(2) For payment of amounts owed by an employer, the retirement system may use any or all of the following methods:

- (a) adjust the amount of subsequent contributions due from the employer;
- (b) accept installment payments; or

(c) accept a lump-sum payment.

Section 10. Retirement system's discretion -- priority right to recover. (1) Nothing in this part is intended to prohibit retirement system staff from working informally with an employer, a member, or a benefit recipient to mutually resolve an error and recover amounts owed to the retirement system prior to the retirement system taking formal action as provided in this part.

(2) The retirement system has sole discretion to determine the most appropriate method for correcting errors and recovering amounts owed to it.

(3) The retirement system's right to recover amounts owed to it as set forth in this part does not prohibit the retirement system from pursuing any other remedy or penalty available to the retirement system.

(4) The retirement system's right to recover amounts owed to it has priority over the claim of any member, benefit recipient, or other individual or entity claiming an interest in any amount payable by the retirement system to or on behalf of the member.

Section 11. Costs and fees for recovering amounts owed. (1) Unless an overpayment or unpaid contributions resulted solely from an error of the retirement system, in any contested case or other civil proceeding for correction of an error or recovery of an overpayment or unpaid contributions, the retirement system is entitled to the costs enumerated in 25-10-201 and to reasonable attorney fees if:

(a) the retirement system prevails in its claim or defense; and

(b) the court finds, upon judicial review, that the claim or defense of the other party that brought or defended the action was frivolous or was pursued in bad faith.

(2) If there are multiple parties adverse to the retirement system in a contested case, the parties are jointly and severally liable for the costs and fees awarded to the retirement system.

Section 12. Section 19-20-401, MCA, is amended to read:

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

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

(a) each year of service for which contributions to the retirement system were deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years of service for which the contributions have been withdrawn and not replaced;

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

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

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

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

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

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

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

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

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

(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have earned if the member's first year part-time salary had been full-time.

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

Section 13. Section 19-20-402, MCA, is amended to read:

"19-20-402. Creditable service for employment in out-of-state public and federal schools. (1) (a) ~~A Subject to 19-20-405, a vested member who has 5 years of active membership service;~~ who has completed 1 full year of active membership in ~~Montana~~ the retirement system subsequent to the member's out-of-state service; and ~~who~~ contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's ~~teaching~~ salary earned in ~~Montana~~ a position reportable to the retirement system after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after the salary was reported to the system for the fiscal year beginning July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

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

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

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the

contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

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

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 14. Section 19-20-403, MCA, is amended to read:

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

(b) To be eligible to purchase service under this section, a member must ~~have at least 5 years of membership service~~ be vested in the retirement system, must have been a member prior to the leave, and must have completed 1 year of active membership in ~~Montana~~ the retirement system subsequent to the member's ~~return leave~~.

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

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

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

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

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

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

~~(5) The provisions of 19-20-405 apply to creditable service purchased under this section."~~

Section 15. Section 19-20-404, MCA, is amended to read:

"19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) ~~A~~ Subject to 19-20-405, a vested member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, ~~if the member has 5 years or more of creditable service in the retirement system.~~ To receive credit for this service, a member shall submit to the board a written application and proper certification of the member's military service.

(2) (a) If a vested member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection (2)(a) for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or the merchant marine. ~~The person member~~ must be awarded creditable service; ~~conditional upon the person's completing 5 years of active membership in Montana,~~ for the number of years, not exceeding 2, that the retirement board determines to be creditable service if the ~~person member~~ contributes to the retirement system an amount equal to the combined employer and employee contributions for the ~~person's member's~~ first full year's teaching salary earned in Montana a position reportable the retirement system following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest paid as follows:

(i) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contribution would have earned had the contribution been in the ~~person's member's~~ account upon completion of 5 years of membership service in Montana; or

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

(b) The contribution rate is that rate in effect at the time the ~~person member~~ is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in

installments as agreed between the ~~person~~ member and the retirement board."

Section 16. Section 19-20-405, MCA, is amended to read:

"19-20-405. Limit on creditable service that may be awarded. The ~~total creditable aggregate years of service for service purchased that may be credited~~ total creditable aggregate years of service under 19-20-402 through 19-20-404, 19-20-408, 19-20-410(1), and 19-20-426 may not exceed 5 years."

Section 17. Section 19-20-408, MCA, is amended to read:

"19-20-408. Creditable service for employment in private schools. (1) (a) ~~A Subject to 19-20-405, a vested member who has at least 5 years of membership service,~~ who has completed 1 full year of active membership in the retirement system subsequent to the member's private school employment; and ~~who~~ contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's ~~teaching~~ salary earned in a position reportable to the retirement system after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

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

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

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the

contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

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

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

~~(5) The provisions of 19-20-405 apply to creditable service purchased under this section."~~

Section 18. Section 19-20-409, MCA, is amended to read:

"19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous service credit in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

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

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to be eligible to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-20-410, or 19-20-426.

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

(6) If an active member who also has service credit in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's

beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602, 19-20-605, 19-20-608, and 19-20-609, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member ~~has 5 years of membership service~~ is vested in the teachers' retirement system and has completed at least 1 full year of active membership in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system."

Section 19. Section 19-20-410, MCA, is amended to read:

"19-20-410. Creditable service for extension service employment. (1) (a) ~~At Subject to 19-20-405,~~ at any time before retirement, a vested member with 5 years or more of creditable service in the retirement system may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service, ~~subject to the limitation contained in 19-20-405,~~ if:

- (i) the member became a member of the retirement system before July 1, 1989;
- (ii) the service involved instructional service at a unit of the Montana university system; and
- (iii) the member received a refund of membership contributions under the civil service retirement system

or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's ~~teaching~~ salary earned ~~after becoming a member of in a position reportable to the retirement system~~ subsequent to the member's extension service employment, plus interest paid as follows:

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contribution would have earned had the contribution been in the member's account upon the ~~completion of 5 years of membership service~~ member becoming vested; or

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

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

Section 20. Section 19-20-426, MCA, is amended to read:

"19-20-426. Creditable service for employment under university system retirement program. (1) (a) ~~A Subject to 19-20-405, a vested member who has at least 5 years of membership service,~~ who has completed 1 full year of active membership in the retirement system subsequent to the member's participation in the university system retirement program pursuant to 19-21-201; and ~~who~~ contributes to the retirement system as

provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for service covered under the university system retirement program.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff with an individual contract under the authority of the board of regents.

(c) A member may not receive credit for service as a student employed by the institution.

(2) For each year of service to be credited under this section, the member shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

~~(4) The provisions of 19-20-405 apply to creditable service purchased under this section."~~

Section 21. Section 19-20-427, MCA, is amended to read:

"19-20-427. Redeposit of contributions previously withdrawn. (1) ~~In~~ Except as provided in subsection (3), in addition to the contributions required under 19-20-602 and 19-20-608, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest paid as follows:

(a) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions would have earned had the contributions not been withdrawn; or

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

(2) The redeposit must be made in accordance with 19-20-415.

(3) A member may not redeposit contributions previously withdrawn under this chapter after retirement benefit payments to the member have started, even if the member returns to active member status."

Section 22. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances -- certain period and life allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the allowances described

in subsection (2) or (3) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter.

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

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

(b) Option B--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will ~~be continued~~ continue throughout the lifetime of the member's joint annuitant.

(c) Option C--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will ~~be continued~~ continue throughout the lifetime of the member's joint annuitant.

(d) Upon election of an optional allowance and designation of a joint annuitant, any prior or subsequent designation of a beneficiary by the retired member is void.

(3) (a) In lieu of any other option available in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member's lifetime, whichever is greater:

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

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

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

(4) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different joint annuitant if:

(i) the original joint annuitant has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the joint annuitant.

(ii) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive ~~the optional retirement allowance~~ any ongoing or future distribution of any portion of the retiree's benefits as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

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

(5) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select a different actuarially equivalent optional allowance and designate a different joint annuitant or to revert the optional retirement allowance to the ~~full~~ normal form of retirement allowance available at the time of retirement if:

(a) the original joint annuitant has died. The benefit must revert to the ~~full~~ normal form of retirement allowance effective the first of the month following the death of the original joint annuitant.

(b) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive ~~the optional retirement allowance~~ any ongoing or future distribution of any portion of the retiree's benefits as part of the divorce settlement. The benefit must revert to the ~~full~~ normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(6) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(7) The retired member shall file the written application required by subsection (4) or (5) with the board within 18 months of the death or divorce of the joint annuitant."

Section 23. Section 19-20-715, MCA, is amended to read:

"19-20-715. Earned compensation -- limitations. (1) Compensation in excess of the limitations set

forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

(2) ~~(a) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the~~ The earned compensation reported in each year ~~of the 3 years that~~ that is used to make up the average final compensation may not be greater than 110% of the previous year's reported earned compensation ~~included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except~~ not including increases that result from movement on the employer's adopted salary matrix.

~~(3)(b)~~ (b) Earned compensation in excess of the amount specified in subsection (2)(a) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716(1)(b)."

Section 24. Section 19-20-716, MCA, is amended to read:

"19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (4) and (5), one of the following options:

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

(b) Option 2--The member may use a yearly amount of the total termination pay added to each of the ~~3~~ consecutive years' salary used in the calculation of the member's average final compensation under 19-20-805. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602, 19-20-605(1), 19-20-608, and 19-20-609. For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that

would have been payable by the state as a supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3--The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) If a member signs a binding, irrevocable written election for either an option 1 or option 2 benefit at least 90 days prior to the member's termination date, the employee contributions required by this section must be picked up by the employer. The binding, irrevocable written election required by this subsection (2) must be signed by both the member and the employer and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the member's date of termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections (4) and (5).

(4) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(5) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked

up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

Section 25. Section 19-20-718, MCA, is amended to read:

"19-20-718. Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system required under part 4 or 6 of this chapter that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) (a) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.

(b) For limitation years beginning after December 31, 2000, compensation must also include any elective amounts that are not able to be included in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.

(c) For limitation years beginning on and after September 1, 2009, compensation for the limitation year must also include compensation paid by the later of 2.5 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours, such as overtime or shift differential, commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after September 1, 2009, a member's compensation for purposes of this section may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code.

(e) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, 26 U.S.C. 414(u)(12), a member receiving from an employer differential wage payments as defined under section 3401(h)(2) of the Internal Revenue Code, 26 U.S.C. 3401(h)(2), must be treated as employed by that employer. The differential wage payments must be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c). This provision must be applied to all similarly situated employees in an equivalent manner."

Section 26. Section 19-20-802, MCA, is amended to read:

"19-20-802. Early retirement. (1) (a) A vested tier one member who is not eligible for service retirement but ~~who has been credited with at least 5 years of creditable service~~ and has attained the age of 50 is eligible for an early retirement allowance.

(b) A vested tier two member who is not eligible for service retirement but ~~who has at least 5 years of creditable service~~ and has attained the age of 55 is eligible for an early retirement allowance.

(2) A member retiring early under subsection (1) must have terminated employment in all positions reportable to the retirement system and must file a written application with the retirement board.

(3) The early retirement allowance must be determined as prescribed in 19-20-804, with the exception that the allowance will be reduced using actuarially equivalent factors based on the most recent actuarial valuation of the system."

Section 27. Section 19-20-904, MCA, is amended to read:

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

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

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

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

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

"19-20-1001. Allowances for death of member prior to retirement. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) ~~Except as provided in subsection (2)(d), in~~ In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the ~~nominated~~ designated beneficiary may elect to receive a retirement allowance. The retirement allowance for the beneficiary of the member must

be determined as prescribed in 19-20-804, without reference to 19-20-715(2)(a), in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that a beneficiary receiving payments under subsection (2)(a) dies and payments made to the beneficiary do not equal the amount of the member's accumulated contributions at the time of the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

~~(d) The nominated beneficiary of a deceased tier two member may elect to receive a retirement allowance as permitted under subsection (2)(a) only if the tier two member died within 1 year of the last day on which the tier two member was employed in a position reportable to the retirement system. If the tier two member was an inactive member for more than 1 year before the member's date of death, the tier two member's accumulated contributions must be paid pursuant to subsection (1).~~

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

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

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death, then:

(a) each beneficiary is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.

(6) If a family law order has been issued, an alternate payee's rights under the family law order must be given priority over the rights of a beneficiary."

Section 29. Section 19-20-1101, MCA, is amended to read:

"19-20-1101. Withholding of group insurance premium from retirement allowance. (1) A retired member who is a participant in an approved employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. Premiums withheld ~~may~~ must be paid directly to the ~~insurance carrier or sponsoring employer of record~~ at the time of retirement.

(2) Upon the death of a retired member, the joint annuitant or beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit ~~and paid directly to the employer or the employer's insurance carrier~~.

(3) Each month, using the retirement system's online employer reporting system, the employer shall commence withholding, cease withholding, or process any necessary adjustments to the premium amount on behalf of the benefit recipient, including verification that all authorized insurance deductions are correct.

(4) The employer shall notify the benefit recipient of any changes related to the premiums, including any changes to the premium amount, prior to the effective date of the change."

Section 30. Repealer. The following section of the Montana Code Annotated is repealed:
19-20-705. Correction of errors.

Section 31. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 19, chapter 20, and the provisions of Title 19, chapter 20, apply to [sections 1 through 11].

Section 32. Effective date. [This act] is effective July 1, 2015.

Section 33. Retroactive applicability. [Section 25] applies retroactively, within the meaning of 1-2-109, to differential wage payments made on or after January 1, 2009.

- END -

I hereby certify that the within bill,
HB 0085, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2015.

President of the Senate

Signed this _____ day
of _____, 2015.

HOUSE BILL NO. 85
INTRODUCED BY T. WOODS
BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

AN ACT GENERALLY REVISING ADMINISTRATIVE AND FEDERAL TAX QUALIFICATION PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; REVISING PROVISIONS RELATED TO THE CORRECTION OF ERRORS, RECOVERY OF AMOUNTS DUE RESULTING FROM ERRORS, CREDITABLE SERVICE, OPTIONAL RETIREMENT ALLOWANCES, COMPENSATION LIMITATIONS, MAXIMUM CONTRIBUTIONS, DIFFERENTIAL WAGE PAYMENTS, DISABILITY BENEFITS, DEATH BENEFITS, AND GROUP INSURANCE PREMIUM WITHHOLDING; AMENDING SECTIONS 19-20-401, 19-20-402, 19-20-403, 19-20-404, 19-20-405, 19-20-408, 19-20-409, 19-20-410, 19-20-426, 19-20-427, 19-20-702, 19-20-715, 19-20-716, 19-20-718, 19-20-802, 19-20-904, 19-20-1001, AND 19-20-1101, MCA; REPEALING SECTION 19-20-705, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.