

HOUSE BILL NO. 117

INTRODUCED BY M. BERTOGLIO

BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKING RETIREE PROVISIONS UNDER THE
TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-20-731, 19-20-732, AND 19-20-734, MCA;
AMENDING SECTION 4, CHAPTER 307, LAWS OF 2019; AND PROVIDING AN EFFECTIVE DATE AND A
TERMINATION DATE."

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

Section 1. Section 19-20-731, MCA, is amended to read:

**"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits
-- reporting obligation of retired member.** (1) (a) Except as provided in 19-20-732 or as otherwise provided in
this section, a retired member may be employed in a position that is reportable to the retirement system and
may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) ~~one-third~~ 49% of the sum of the member's average final compensation; or
(ii) ~~one-third~~ 49% of the median of the average final compensation for members retired during the
preceding fiscal year as determined by the retirement board.

(b) The maximum compensation that a retired member may earn under subsection (1)(a) without
an adjustment of retirement benefits includes all amounts paid to or on behalf of the retired member and the
value of all benefits provided to or on behalf of the retired member by the employer, including any amounts
deferred for payment to a later year, excluding:

(i) health insurance premiums directly paid by the employer on the retired member's behalf for
health care coverage provided by the employer;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the
employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(c) A member applying for a retirement allowance or resumption or recalculation of a retirement allowance based on a termination date of January 1, 2014, or later is required to complete the break-in-service period set forth in 19-20-734 before the retired member may be employed in a position reportable to the retirement system.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in 19-20-732, the retirement benefit of a retired member:

(a) employed and earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be suspended if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be suspended effective on the date on which the retired member returns to employment.

(4) For purposes of this section, the term "employed in a position that is reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

(5) For purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all

positions reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

(7) For purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(8) The retirement allowance of any retired member who is employed in a position and who elects to participate in the university system retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the university system retirement program."

Section 2. Section 19-20-732, MCA, is amended to read:

"19-20-732. (Temporary) Reemployment of certain retired teachers, specialists, and administrators -- procedure -- definitions. (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

- (i) the retired member completed 27 or more years of creditable service prior to retirement;
 - (ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and
 - (iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator.
- The office of public instruction shall verify that the employer has advertised the position as required under this

subsection (1)(a)(iii).

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the education interim committee and the state administration and veterans' affairs interim committee, as provided in 5-11-210, regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, 19-20-607, 19-20-608, and 19-20-609.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, the following definitions apply:

~~(a) "Administrator" means a school principal or district administrator other than a superintendent.~~

~~(b)(a)~~ "Employer" means a school district as defined in 20-6-101 and 20-6-701 that employs a retired member and is a second-class or third-class elementary district under 20-6-201 or a second-class or third-class high school district under 20-6-301.

~~(e)(b)~~ "Year" means all or any part of a school year. (Terminates June 30, 2025 ~~2029~~ 2027 ~~--sec. 4, Ch. 307, L. 2019.~~)

19-20-732. ~~(Effective July 1, 2025)~~ (Effective July 1, 2029 2027) Reemployment of certain retired

teachers, specialists, and administrators -- procedure -- definitions. (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

(i) the retired member completed 30 or more years of creditable service prior to retirement;

(ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

(iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator;

(b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the education interim committee and the state administration and veterans' affairs interim committee in accordance with 5-11-210 regarding the implementation of and results arising from this section.

(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, 19-20-607, 19-20-608, and 19-20-609.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39,

chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Employer" means a school district as defined in 20-6-101 and 20-6-701.

(b) "Year" means all or any part of a school year."

Section 3. Section 19-20-734, MCA, is amended to read:

"19-20-734. Break-in-service requirements. (1) Except as provided in 19-20-732 and subsection (2) of this section, a retired member who first applies for retirement benefits or applies for resumed or recalculated retirement benefits pursuant to 19-20-733:

(a) based on a date of termination of January 1, 2014, ~~or later~~ through December 31, 2023, may not be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a break in service of 150 calendar days commencing on the first day following the member's date of termination; or

(b) based on a date of termination of January 1, 2024, or later, may not be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a break in service of 120 calendar days commencing on the first day following the member's date of termination.

(2) A retired member may be employed by an employer during the break-in-service period only if:

(a) the retired member:

(i) is employed as a substitute classroom teacher to carry on the duties of a regular, licensed teacher who is temporarily absent;

(ii) performs the service after attaining retired member status; and

(iii) performs the service for no more than 45 days during the break-in-service period; or

(b) the retired member continues employment in a position in which the retired member was appropriately reported to the public employees' retirement system prior to and at the time of retirement with the teachers' retirement system.

(3) If a retired member is employed in a position reportable to the retirement system in violation of

1 this section:

2 (a) the retired member must be returned to active member status with the retirement system
3 retroactive to the member's date of retirement or the date of resumption of retirement benefits, whichever is
4 later, and the member's retirement benefits must be terminated;

5 (b) the member shall repay all retirement benefits received in violation of this section, plus interest
6 at the actuarially assumed rate; and

7 (c) the member and the employer shall pay to the retirement system contributions on all earned
8 compensation paid to the member for service performed during the break-in-service period, plus interest at the
9 actuarially assumed rate.

10 (4) For purposes of this section, the term "employed in a position reportable to the retirement
11 system" includes any work performed or service provided by a retired member to or on behalf of an employer,
12 including but not limited to work performed or service provided through a professional employer arrangement,
13 an employee leasing arrangement, as a temporary service contractor, or as an independent contractor."

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15 **Section 4.** Section 4, Chapter 307, Laws of 2019, is amended to read:

16 **"Section 4. Termination.** [This act] terminates June 30, ~~2025~~ 2029 2027."

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18 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2023.

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20 NEW SECTION. **Section 6. Termination.** [Sections 1 and 3] terminate June 30, ~~2029~~ 2027.

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