

**Proposal for Retirement Plan Legislation**

(for the 2007 Legislative Session)

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1. What is the problem or issue?

Sometime ago the statutes were changed to require the “final average compensation” to be based on the compensation averaged over the last 36 months of a member’s service. Previously the last month’s salary was used. Based on the last month’s salary being the basis for the retirement payment there was an opportunity for abuse of shift differential pay, overtime pay, and holiday pay to increase the benefits. After this changed to a 36 months period the definition of “final average compensation” was not changed to include the three pay factors in the definition (see current wording of statute below).

“Sec. 19-9-104, (4) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service.”

The Firefighters Retirement System also has the same situation and that also should be corrected. These two retirement systems are the only ones not including the “total pay” in the calculation.

The following is the current definition of “compensation”.

**“19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means the remuneration paid from funds controlled by an

employer in payment for the member's services before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

- (i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave and annual leave; and
- (ii) maintenance, allowances, and expenses.”

2. What do you want the legislation to do?

The legislation should be changed to make all retirement systems equal when defining “final average compensation”. The three types of pay, i.e. shift differential pay, overtime pay, and holiday pay, should be placed in the definition of “compensation”.

Since the cost to Local and State Government is significant the process should include a phase in of each type of pay.

3. If possible, please list the MCA (Montana Code Annotated) sections that would need to be amended.

Section 19-9-104, (1)(a) and (1)(b)(i) would need to be amended. Last Sessions bill to take care of the amendments was HB426. The bill was defeated due to the costs involved.

4. Which retirement plan or plans would be covered by the legislation? (If the proposal is limited to certain plans, please indicate why.)

This particular proposal addresses the Municipal Police Officers’ Retirement System only. To correct the concern for the Firefighters Unified Retirement System, Section 19-13-104, would have to be amended. The bill to make that changed last Session was SB491.

Since the organizations are two different groups the Police Officers do not feel they can speak for the Firefighters and their desires for legislative changes.

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5. If the proposed change requires additional funding, what funding sources do you propose (e.g., an increase in employer contributions, employee contributions, or both)?

Additional funding is in fact required and that is the reason the proposed change failed last Session. The change could be phased in over a period of time, with each of the pay items being done at a different time. Increases in employer contributions, employee contributions, and state contributions would need to be considered to pay the cost.

6. Has similar legislation been requested in the past, been introduced in another state, or provided as a model act? If so, please provide a citation, reference, or point of contact.

During the last Session HB426 and SB491 were proposed to correct the concern for both the Police Officers and Firefighters and both failed due to funding concerns. The bills had support from Legislators but the cost was the deciding factor.

All other retirement systems in the Montana Government include the items of pay that are of concern to the Police Officers

6. If you are a holdover senator or a legislative candidate running unopposed, do you want the Legislative Services Division staff to consider this a bill draft request? The request is coming from the Montana Police Protective Association and a sponsor has not been sought at this date.

**PLEASE RETURN THIS FORM BY JUNE 9, 2006**

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