



AN ACT GENERALLY REVISING THE STATUTES CONCERNING CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; REQUIRING THE PUBLIC EMPLOYEE RETIREMENT BOARD TO ADOPT RULES; AMENDING SECTIONS 19-2-303, 19-2-506, 19-2-704, 19-2-710, 19-2-715, 19-2-801, 19-2-908, 19-3-201, 19-3-316, 19-3-403, 19-3-504, 19-3-513, 19-3-906, 19-3-1015, 19-3-1106, 19-3-1210, 19-3-2111, 19-3-2133, 19-5-601, 19-5-612, 19-5-801, 19-5-802, 19-6-612, 19-7-404, 19-7-612, 19-8-712, 19-9-904, 19-9-1101, 19-13-104, 19-13-704, 19-13-803, 19-13-804, 19-17-107, 19-17-401, 19-17-408, AND 19-17-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Section 19-2-303, MCA, is amended to read:

**"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means ~~a person~~:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(16) "Department" means the department of administration.

(17) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit

of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(18) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(19) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;
- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(25) "Internal Revenue Code" has the meaning provided in 15-30-101.

(26) "Member" means either:

- (a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or
- (b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has:

- (a) terminated from service; and
- (b) received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

- (a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a

defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(42) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(43) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(44) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(45) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(46) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(47) "Termination of service", "termination from service", "terminated from service", "terminated service",

"terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) the member is no longer receiving compensation for covered employment; and

(c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (47), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(48) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(49) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

(50) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(51) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

(52) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

**Section 2.** Section 19-2-506, MCA, is amended to read:

**"19-2-506. Payment of contributions by employers -- accompanying reports -- penalty.** (1) The

board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or \$10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) (a) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer. ~~The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any other data concerning employees that the board needs to administer the specific retirement system or plan. The board shall establish~~

(b) The rules must specify the employee categories to be reported, the data required, the method of reporting, the reporting period, and the frequency of reports needed to meet the demands of the relevant retirement system or plan.

(c) The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.

(4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(5) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials."

**Section 3.** Section 19-2-704, MCA, is amended to read:

**"19-2-704. Purchasing service credits allowed -- payroll deduction.** (1) Subject to the rules promulgated by the board, an eligible member may elect to make additional contributions to purchase service

credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment by personal check or rollover of funds from another eligible plan, to make installment payments, or to make a combination of a lump-sum payment and installment payments.

(4) Installment payments must be made by personal check paid directly to the board; unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments ~~made directly to the board~~ is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be signed by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) ~~must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;~~

~~——(d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and~~

~~(e)~~(d) must specify that the additional contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective additional contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee's additional contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any additional contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction agreement without terminating employment, except when a member ~~with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j)~~ becomes a member of another retirement system by an authorized election and the service purchase is in accordance with 19-2-715.

(7) If a member terminates employment or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid unless further payment is made as provided in this subsection. In the case of a termination from employment, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

**Section 4.** Section 19-2-710, MCA, is amended to read:

**"19-2-710. Nonapplication of part to defined contribution plan.** Except as otherwise provided in 19-2-715 and chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan."

**Section 5.** Section 19-2-715, MCA, is amended to read:

**"19-2-715. Purchase of Montana public service.** (1) (a) A An active member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system if the member has:

(i) received or is eligible to receive a refund of accumulated contributions; or

(ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(d) If the member was formerly in the public employees' retirement system's defined contribution plan, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member. The member is eligible to transfer the vested portion of the member's defined contribution account to pay the balance due. Any nonvested portion of the defined contribution account is forfeited pursuant to 19-3-2117.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of ~~service credit for full-time service performed~~ previous employment for the state or a

political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation. For the purpose of this subsection (2)(a), a political subdivision of the state includes a school district.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes ~~full-time~~ public service, subject to 19-2-403."

**Section 6.** Section 19-2-801, MCA, is amended to read:

**"19-2-801. Designation of beneficiary.** (1) (a) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board. ~~The~~ Except as provided in subsection (1)(b), the most recent beneficiary designation filed with the board is effective for all purposes.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership card for temporary or secondary employment with another employer within the same Title 19 retirement system.

(2) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(3) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient."

**Section 7.** Section 19-2-908, MCA, is amended to read:

**"19-2-908. Time of commencement of benefit -- rulemaking.** (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has

fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of ~~membership service~~ employment or, if requested by the ~~inactive~~ member in writing, on the first day of a later month ~~following filing of the written application~~.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) The guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid retroactively. The guaranteed annual benefit adjustment begins on January 1 of the year after the member has received an amount equal to or greater than 12 months of disability benefit payments.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

**Section 8.** Section 19-3-201, MCA, is amended to read:

**"19-3-201. Contracts with political subdivisions.** (1) Any municipal corporation, county, or public agency in the state may become a contracting employer ~~and make all or specified groups of its employees members of the retirement system by~~ through a contract entered into between the board and the legislative body of the contracting employer. The contract must provide that all employees eligible under this chapter must become members. Contracts executed prior to July 1, 2009, that limit membership to a specific group or groups of employees remain valid. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of chapter 2 and this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by the affirmative vote of two-thirds of the members of the legislative body within 40 days after the adoption of the resolution.

(b) The contract must specify that the provisions of the retirement system apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. The contract must be approved by the board. The board may disapprove of a contract if, in the board's sole discretion, the contract adversely affects the interests of the retirement system. Any amendments to the retirement system made pursuant to Montana laws immediately apply to and become a part of the contract.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency."

**Section 9.** Section 19-3-316, MCA, is amended to read:

**"19-3-316. Employer contribution rates.** (1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rates under 19-3-319.

(3) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to ~~the following percentage~~ 0.27% of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership:

- ~~\_\_\_\_\_ (a) beginning July 1, 2007, 0.135%; and~~
- ~~\_\_\_\_\_ (b) beginning July 1, 2009, 0.27%.~~

(4) (a) The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on July 1 ~~immediately~~ following the board's receipt of the system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."

**Section 10.** Section 19-3-403, MCA, is amended to read:

**"19-3-403. Exclusions from membership.** The following persons may not become members of the retirement system and, except as provided in subsection (7), may not later purchase previous service under 19-3-505:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other

payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);

(5)(6) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6)(7) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505."

**Section 11.** Section 19-3-504, MCA, is amended to read:

**"19-3-504. Absence due to illness or injury.** (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits credit for this period unless the member files with the board a written notice of the member's intent to purchase the time of absence and complies with subsections (2) and (3) subsection (2), in which case the absence is considered as time spent in service for both service credit and membership service.

(2) (a) A member absent because of an employment-related illness or injury entitling the member to workers' compensation payments may, upon the member's return to service; or upon termination of employment if the member cannot return to service due to the illness or injury, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the absence. The amount of contributions owed will be based on the basis of the member's compensation at the commencement of the member's absence, plus regular interest accruing from 1 year from the date after the member returns to service or terminates employment to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute

employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

~~(3) At some time after returning to service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).~~

~~(4) A member loses the right to contribute for an:~~

~~(a) the entire absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602; or for~~

~~(b) the period of time during which retirement benefits are received if the member retires during the absence."~~

**Section 12.** Section 19-3-513, MCA, is amended to read:

**"19-3-513. Application to purchase additional service.** (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement.

(4) Once a member has at least 25 years of membership service, purchases of one-for-five service will be used to adjust the early retirement reduction required in 19-3-906."

**Section 13.** Section 19-3-906, MCA, is amended to read:

**"19-3-906. Early retirement benefit.** (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904.

(2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.

(3) The actuarial reduction provided for in this section must be adjusted for any ~~additional service credit~~ one-for-five service purchased under 19-3-513 once the member has at least 25 years of membership service."

**Section 14.** Section 19-3-1015, MCA, is amended to read:

**"19-3-1015. Medical examination of disability retiree -- cancellation and reinstatement.** (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a board-approved physician or surgeon ~~appointed by the board~~, at a place mutually agreed ~~upon~~ on by the ~~retired member and the board~~, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit

is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer forfeits any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member is considered, for the purposes of 19-2-602, to have terminated service coincident with the commencement of the member's retirement benefit."

**Section 15.** Section 19-3-1106, MCA, is amended to read:

**"19-3-1106. Limited reemployment -- reduction of service retirement benefit upon exceeding limits -- exceptions.** (1) A retired member under 65 years of age who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the

applicable limitation during that calendar year.

(3) ~~A The employer of a retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.~~

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

- (a) a retired member who is 70 1/2 years of age or older; or
- (b) an elected official in a covered position who declines optional membership as provided in 19-3-412.

(6) For the purposes of this section, "employment covered by the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102."

**Section 16.** Section 19-3-1210, MCA, is amended to read:

**"19-3-1210. Death payments to designated beneficiaries of retired members.** If a retired member dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account."

**Section 17.** Section 19-3-2111, MCA, is amended to read:

**"19-3-2111. Plan membership -- written election required -- failure to elect -- effect of election.** (1) Except as otherwise provided in this part:

(a) ~~(i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;~~

———(ii) a member who was an inactive member of the defined benefit plan on the effective date ~~that of~~ the defined contribution plan ~~becomes effective~~ and who is rehired into covered employment after the plan effective date may, within the 12-month period provided for in subsection (2)(a), elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the effective date ~~that of~~ the defined contribution plan ~~becomes effective~~ may, within the 12-month period provided for in subsection (2)(a), elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer

membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."

**Section 18.** Section 19-3-2133, MCA, is amended to read:

**"19-3-2133. Employee investment advisory council.** (1) The board shall create an employee investment advisory council. The advisory council shall meet at least four times a year to:

(+)(a) advise the board concerning the operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

(-)(b) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(-)(c) review existing deferred compensation plans and to advise the board on the administration of the program.

(2) The advisory council is not subject to 2-15-122."

**Section 19.** Section 19-5-601, MCA, is amended to read:

**"19-5-601. Disability retirement benefit.** (1) ~~In~~ Except as provided in subsections (2) and (3), in the case of the disability of a member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement.

(2) If the disability is a direct result of any service or duty for the Montana judiciary, the member's disability retirement benefit must be:

(4) the greater of one-half of the member's current salary or ~~the contingent annuitant's benefit, if applicable, for a person not covered under 19-5-901; or~~

~~———(2) the greater of one-half of the member's highest average compensation or the contingent annuitant's benefit, if applicable, for a person covered under 19-5-901.~~

(3) If the member was retired at the time of becoming disabled, the member must continue to receive the same retirement benefit previously elected."

**Section 20.** Section 19-5-612, MCA, is amended to read:

**"19-5-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon ~~at the recipient's place of residence or at another a place mutually agreed on; by the board, the disabled member, and the physician or surgeon and~~ at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability retirement benefit."

**Section 21.** Section 19-5-801, MCA, is amended to read:

**"19-5-801. Payments upon employment-related death.** (1) Except as provided in subsection (3), ~~if~~ the board finds that a member died as a direct and proximate result of injury received in the course of the member's service or duty, a survivorship benefit must be paid to the member's designated beneficiary.

(2) The survivorship benefit is the ~~greater of the following:~~

~~———(a) the equivalent of the contingent annuitant's benefit, if applicable; or~~

~~(b) the member's service retirement benefit standing to the member's credit on the date of death.~~

(3) If the member was retired at the time of death, the provisions of 19-5-701 apply."

**Section 22.** Section 19-5-802, MCA, is amended to read:

**"19-5-802. Payments in case of death from other causes.** (1) If a retired member not covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2), the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

(2) If a retired member covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2), the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) If a vested member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the involuntary retirement benefit provided in 19-5-503."

**Section 23.** Section 19-6-612, MCA, is amended to read:

**"19-6-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at ~~the recipient's place of residence or at another~~ a place mutually agreed on; by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting

that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review."

**Section 24.** Section 19-7-404, MCA, is amended to read:

**"19-7-404. Employer contributions.** (1) Each employer shall pay 9.535% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget, levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation.

(3) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the following percentage 0.58% of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership:

~~—— (a) beginning July 1, 2007, 0.29%; and~~

~~—— (b) beginning July 1, 2009, 0.58%.~~

(4) (a) The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule

set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on July 1 ~~immediately~~ following the board's receipt of the system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."

**Section 25.** Section 19-7-612, MCA, is amended to read:

**"19-7-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon ~~at the recipient's place of residence or at another a place mutually agreed on;~~ by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in a comparable pay and benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(3) The public body required to reinstate a person under subsection (2) may request a medical or

psychological review as to the ability of the member to return to work as a member of the sheriff's office. If the board's findings are upheld, the public body shall pay the cost of the review."

**Section 26.** Section 19-8-712, MCA, is amended to read:

**"19-8-712. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon ~~at the recipient's place of residence or at another a place mutually agreed on;~~ by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(4) The member's former employer may request a medical or psychological review as to the ability of

the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review."

**Section 27.** Section 19-9-904, MCA, is amended to read:

**"19-9-904. Termination of disability benefit.** The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon ~~at the recipient's place of residence or at another~~ a place mutually agreed on; by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905 or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time."

**Section 28.** Section 19-9-1101, MCA, is amended to read:

**"19-9-1101. Preretirement death benefits.** Upon the death of an active member, the member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average compensation, payable as provided in 19-9-804(2). If the deceased member has completed over 20 years of membership service, the survivorship benefit must equal 2.5% of the member's final average compensation for each year of ~~membership~~ service credit."

**Section 29.** Section 19-13-104, MCA, is amended to read:

**"19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban

firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; and

(ii) maintenance, allowances, and expenses.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means:

(a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or;

(b) a city or a rural fire district referred to in 19-13-210(3);

(c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201; and

(d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.

(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards

provided in 7-33-4106 and 7-33-4107.

(7) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member reaches both 50 years of age or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter and who is appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

**Section 30.** Section 19-13-704, MCA, is amended to read:

**"19-13-704. Amount of service retirement benefit.** (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of membership service, a benefit equal to 2% of the member's highest monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of membership service, a benefit equal to 50% of the member's highest monthly compensation plus 2% of the member's highest monthly compensation for each year of service credit over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the benefit as long as they remain dependent children as defined in 19-13-104."

**Section 31.** Section 19-13-803, MCA, is amended to read:

**"19-13-803. Amount of disability retirement benefit.** (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation;

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit, but no less than one-half of the member's highest average compensation.

(2) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-13-104."

**Section 32.** Section 19-13-804, MCA, is amended to read:

**"19-13-804. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination ~~at the board's expense.~~ The examination must be made by a board-approved physician or surgeon ~~at the recipient's place of residence or at another~~ a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. ~~Based on the results~~ Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient ~~has the physical or mental capacity to~~ can perform the essential elements ~~required by the recipient's former~~ of the position held by the recipient when the recipient retired.

(2) If the board determines that the recipient is not incapacitated, if the recipient refuses to submit to a medical examination, or if, when a position is available, the recipient cannot be reinstated under 19-13-805 for reasons unrelated to the disability, the recipient's disability retirement benefit must be canceled. The board shall

notify the recipient of this determination and the cancellation of the recipient's benefit.

~~(2)~~(3) The cancellation of a disability retirement benefit because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit."

**Section 33.** Section 19-17-107, MCA, is amended to read:

**"19-17-107. Employment of actuary -- ~~biennial~~ annual investigation.** (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public pension systems. The actuary is the technical adviser to the board on matters regarding the actuarial funding of the pension trust fund.

(2) The board shall require the actuary to make a ~~biennial~~ annual actuarial valuation of the assets and liabilities of the pension trust fund. The actuarial valuation must include the sufficiency of the fund to pay full and partial benefits to members and benefit recipients and must include recommendations for any changes that should be made to those benefits or the contributions to the pension trust fund to ensure the actuarial soundness of the pension trust fund.

(3) The board shall require the actuary to conduct periodic actuarial experience studies of the pension trust fund and to recommend any changes in actuarial assumptions or tables based upon the studies."

**Section 34.** Section 19-17-401, MCA, is amended to read:

**"19-17-401. Eligibility for pension and disability benefits.** (1) To qualify for a full pension, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

~~(5) (a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.~~

~~————(b) A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire company without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to service."~~

**Section 35.** Section 19-17-408, MCA, is amended to read:

**"19-17-408. Medical review of certain disability retirees.** The board may require a member who receives a disability benefit to undergo periodic medical examinations. The examinations must be made by a board-approved physician or surgeon at the member's residence or a place mutually agreeable to the board, the physician or surgeon, and the member and at the board's expense. Upon the basis of these examinations and the advice of the board's consulting physician, the board shall determine, by reason of physical or mental capacity, whether the member remains permanently and totally disabled."

**Section 36.** Section 19-17-504, MCA, is amended to read:

**"19-17-504. Medical expenses.** (1) The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was incurred in the line of duty, as described in 19-17-105, and that required the services of a physician, surgeon, or nurse, whether or not the member was hospitalized. The payments must equal the amount of the member's necessary and reasonable out-of-pocket medical expenses that resulted

directly from the injury or illness and that were billed within 36 months following the date of the injury or illness. The member shall file a claim for reimbursement within 12 months of the date of the bill. The total claim for reimbursement may not exceed \$25,000.

(2) If an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall authorize either a payment for the cost of a prosthesis or a payment of \$1,500 to help defray the cost of a prosthesis, whichever is less. The prosthesis may be replaced when necessary, but not more often than every 5 years. The board shall authorize payment of not more than \$1,500 of the replacement costs."

**Section 37. Effective date.** [This act] is effective July 1, 2009.

- END -

I hereby certify that the within bill,  
HB 0109, originated in the House.

---

Chief Clerk of the House

---

Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

---

President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

HOUSE BILL NO. 109

INTRODUCED BY C. HUNTER

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

AN ACT GENERALLY REVISING THE STATUTES CONCERNING CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; REQUIRING THE PUBLIC EMPLOYEE RETIREMENT BOARD TO ADOPT RULES; AMENDING SECTIONS 19-2-303, 19-2-506, 19-2-704, 19-2-710, 19-2-715, 19-2-801, 19-2-908, 19-3-201, 19-3-316, 19-3-403, 19-3-504, 19-3-513, 19-3-906, 19-3-1015, 19-3-1106, 19-3-1210, 19-3-2111, 19-3-2133, 19-5-601, 19-5-612, 19-5-801, 19-5-802, 19-6-612, 19-7-404, 19-7-612, 19-8-712, 19-9-904, 19-9-1101, 19-13-104, 19-13-704, 19-13-803, 19-13-804, 19-17-107, 19-17-401, 19-17-408, AND 19-17-504, MCA; AND PROVIDING AN EFFECTIVE DATE.