

## 1 HOUSE BILL NO. 608

2 INTRODUCED BY W. STAHL

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ANNUITY BENEFIT PROGRAM; REQUIRING THE  
5 DEPARTMENT OF ADMINISTRATION TO ADMINISTER THE PROGRAM; PROVIDING THE DEPARTMENT  
6 WITH RULEMAKING AUTHORITY TO IMPLEMENT AND ADMINISTER THE PROGRAM; REQUIRING  
7 CERTAIN EMPLOYEES OF THE STATE OF MONTANA AND ITS POLITICAL SUBDIVISIONS TO  
8 PARTICIPATE IN THE PROGRAM; REQUIRING EMPLOYEE AND EMPLOYER CONTRIBUTIONS TO THE  
9 PROGRAM; ALLOWING CERTAIN POLITICAL SUBDIVISIONS TO CONTRACT WITH THE DEPARTMENT TO  
10 PARTICIPATE IN THE PROGRAM; CLOSING EXISTING STATE PUBLIC RETIREMENT SYSTEMS TO NEW  
11 MEMBERS; PROVIDING AN APPROPRIATION; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO  
12 SEEK A RULING FROM THE INTERNAL REVENUE SERVICE; AMENDING SECTIONS 19-2-303, 19-3-319,  
13 19-3-401, 19-3-412, 19-5-301, 19-6-301, 19-7-301, 19-7-302, 19-8-301, 19-8-302, 19-9-301, 19-13-301,  
14 19-20-101, 19-20-302, AND 20-9-501, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY  
15 DATE."

16

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

18

19 NEW SECTION. **Section 1. Definitions.** Unless the context requires otherwise, as used in [sections  
20 1 through 10], the following definitions apply:

21 (1) "Contracting employer" means any political subdivision or governmental entity that has contracted  
22 with the department for its employees to participate in the annuity benefit program.

23 (2) "Department" means the department of administration created in 2-15-1001.

24 (3) "Employee" means a person who is employed by an employer in any capacity and whose salary is  
25 paid by the employer.

26 (4) "Employer" means a governmental agency participating in the annuity benefit program on behalf of  
27 its eligible employees. The term includes a contracting employer.

28 (5) "Initially hired", "initially employed", "initially elected", or "initially appointed" means the earliest date  
29 on which an individual is first hired, appointed to, or employed in a covered position, which may not necessarily  
30 be an employee's current covered position.

1 (6) "Participant" means a person with an account in the annuity benefit program.

2 (7) "Program" means the annuity benefit program provided for in [sections 1 through 10].

3 (8) "Retirement system" means one of the public employee retirement systems referred to in 19-2-302  
4 or the teachers' retirement system established in 19-20-102.

5

6 **NEW SECTION. Section 2. Establishment of benefit annuity program -- authority to contract for**  
7 **provision of annuities.** (1) (a) The department shall establish an annuity benefit program, as provided in  
8 [sections 1 through 10], for employees of the state and its political subdivisions who would otherwise be members  
9 of a retirement system and who are initially hired by an employer on or after July 1, 2012.

10 (b) The department may contract with local governments as provided in [sections 9 and 10] to allow  
11 employees of a contracting employer to participate in the annuity benefit program.

12 (2) The benefits under the program must be provided through either an individual fixed annuity contract  
13 or a combination of contracts issued to and owned by the participants in the program. The program must comply  
14 with applicable sections of the Internal Revenue Code.

15

16 **NEW SECTION. Section 3. Duties of department.** (1) The department shall:

17 (a) provide for the administration of the program; and

18 (b) designate the company or companies from which the contracts are to be purchased and approve the  
19 form and content of the contracts, taking into consideration the:

20 (i) nature and extent of the rights and benefits to be provided by the contracts for participants and their  
21 beneficiaries;

22 (ii) relationship of these rights and benefits to the amount of contributions to be made;

23 (iii) suitability of these rights and benefits to the needs of the participants and the interests of the state  
24 and its political subdivisions with employees participating in the contracts; and

25 (iv) ability of the designated company or companies to provide these rights and benefits.

26 (2) The department shall adopt rules to implement and administer the provisions of [sections 1 through  
27 10], including rules to create an advisory board, which shall serve as the fiduciary for the program.

28

29 **NEW SECTION. Section 4. Participation in program -- optional participation.** (1) Except as provided  
30 in subsection (2), an employee who would otherwise be a member of a retirement system and who is initially hired

1 by an employer on or after July 1, 2012, shall participate in the program.

2 (2) An employee or elected official initially hired, initially elected, or initially appointed on or after July 1,  
3 2012, who would otherwise be eligible for optional participation in the public employees' retirement system  
4 pursuant to 19-3-412 shall elect to become either an active participant in the program or decline this optional  
5 participation by filing a written, irrevocable application with the department within 90 days of the commencement  
6 of the employee's or elected official's employment.

7 (3) If the employee or elected official fails to file the written application required under subsection (2) with  
8 the department within the time allowed in subsection (2), the employee or elected official waives optional  
9 participation in the program.

10 (4) Except as provided in subsection (2), participation in the program is not optional for an employee or  
11 elected official who is already a participant. Upon employment in a position for which participation is optional:

12 (a) a participant who was an active participant before the employment remains an active participant; and

13 (b) a participant who was an inactive participant before the employment becomes an active participant.

14 (5) (a) An employee who declines to participate for a position for which participation is optional may not  
15 later become a participant while still employed with the same employer but in a different optional position.

16 (b) An elected official who declines to participate for a position for which participation is optional may not  
17 later become a participant if reelected to the same position.

18 (c) If, after a break in service of 30 days or more, an employee who was employed in an optional position  
19 is reemployed in the same position or is employed in a different position for which participation is optional, the  
20 employee shall again choose or decline to participate.

21 (d) If the break in service is less than 30 days, an employee who declined to participate is bound by the  
22 employee's original decision to decline participation.

23 (6) An employee accepting a position that requires participation must become a participant even if the  
24 employee previously declined participation and did not have a 30-day break in service.

25  
26 **NEW SECTION. Section 5. Contributions.** (1) (a) Each program participant who would otherwise be  
27 a member of a retirement plan provided for in Title 19, chapter 5, 6, 7, 8, 9, or 13:

28 (i) shall contribute an amount equal to 10% of the participant's earned compensation; and

29 (ii) may contribute an additional amount of the participant's compensation that will not, when combined  
30 with the amount required to be contributed under subsection (1)(a)(i), exceed the maximum amount allowed

1 under the Internal Revenue Code for the type of annuity contract offered to the participant.

2 (b) Each employer of a participant who would otherwise be a member of a retirement plan provided for  
3 in Title 19, chapter 5, 6, 7, 8, 9, or 13 shall contribute an amount equal to 10% of earned compensation.

4 (2) (a) Each program participant who would otherwise be a member of a retirement plan provided for  
5 in Title 19, chapter 3 or 20:

6 (i) shall contribute an amount equal to 7% of the participant's earned compensation; and

7 (ii) may contribute an additional amount of the participant's compensation that will not, when combined  
8 with the amount required to be contributed under subsection (2)(a)(i), exceed the maximum amount allowed  
9 under the Internal Revenue Code for the type of annuity contract offered to the participant.

10 (b) Each employer of a participant who would otherwise be a member of a retirement plan provided for  
11 in Title 19, chapter 3 or 20, shall contribute an amount equal to 7% of the participant's earned compensation.

12

13 **NEW SECTION. Section 6. Employers to include annuity program contribution costs in budget.**

14 (1) A covered state employer shall include in the employer's budget and request a legislative appropriation for  
15 an amount necessary to pay for the state's share of the costs of [sections 1 through 10] for the employer's  
16 employees so that the legislature may make definite appropriations for the costs incurred by each employer with  
17 employees who are participants in the plan.

18 (2) A contracting employer shall budget for an amount necessary to pay for the employer's share of the  
19 costs of [sections 1 through 10] for the employer's employees so that the employer's governing body or budgeting  
20 authority may make definite appropriations or provision for the costs incurred by each employer with employees  
21 who are participants in the plan.

22

23 **NEW SECTION. Section 7. Payment of benefits.** A retirement, death, or other benefit may not be paid  
24 by the state or the department under the annuity benefit program. Benefits are payable to a participant and the  
25 participant's beneficiaries only by the designated company or companies in accordance with the terms of the  
26 contracts.

27

28 **NEW SECTION. Section 8. Exemption from taxation, legal process, and assessments.** Except for  
29 execution or withholding for the payment of child support or for the payment of spousal support for a spouse or  
30 former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the annuity

1 benefit program and the earnings on the contributions are:

2 (1) except for a retirement allowance received in excess of the amount determined pursuant to  
3 15-30-2110(2)(c), exempt from any state, county, or municipal tax;

4 (2) not subject to execution, garnishment, attachment, or other process;

5 (3) not covered or assessable by an insurance guaranty association; and

6 (4) unassignable except as specifically provided in the contracts.

7

8 **NEW SECTION. Section 9. Contracts with political subdivisions.** (1) Any municipal corporation,  
9 county, or public agency in the state may become a contracting employer through a contract entered into between  
10 the department and the governing body of the contracting employer. The contract must provide that all employees  
11 eligible under this chapter must become members.

12 (2) The approval of the contract is subject to the following provisions:

13 (a) The governing body of the contracting employer shall adopt a resolution of intention to approve the  
14 contract that contains a summary of the major provisions of the annuity benefit program. The contract may not  
15 be approved unless the employees proposed to be included in the annuity benefit program adopt the proposal  
16 by a majority affirmative vote by secret ballot. The ballot at the election must include the summary of the annuity  
17 benefit program as set forth in the resolution. The election must be conducted as prescribed by the governing  
18 body of the contracting employer. Approval of the contract must be by the affirmative vote of two-thirds of the  
19 members of the governing body within 40 days after the adoption of the resolution.

20 (b) The contract must specify that the provisions of the annuity benefit program apply to all employees  
21 on the effective date of the contract and to all employees hired after the effective date of the contract.

22 (c) The contract may be amended in the manner prescribed in this section for the original approval of  
23 contracts. The contract must be approved by the department. The department may disapprove of a contract if,  
24 in the department's sole discretion, the contract adversely affects the interests of the annuity benefit program.  
25 Any amendments to the annuity benefit program made pursuant to Montana laws immediately apply to and  
26 become a part of the contract.

27 (3) The termination of the contract is subject to the following provisions:

28 (a) The governing body of a contracting employer shall adopt a resolution giving notice to its employees  
29 that it intends to terminate participation in the annuity benefit program.

30 (b) All employees participating in the annuity benefit program must be given notice of the termination

1 resolution and be permitted to vote for or against the resolution by secret ballot.

2 (c) If a majority of covered employees votes for termination, the governing body, within 20 days after the  
3 approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating  
4 participation in the annuity benefit program effective on the last day of that month and forward the resolution and  
5 a certified copy of the election results to the department.

6  
7 **NEW SECTION. Section 10. Request by individual employee for employer to participate.** Any  
8 employee who has, for a continuous period of at least 2 years, been an employee of a municipal corporation,  
9 county, or other public agency of this state that is not a contracting employer may advise the governing body of  
10 the employer, in writing, that the employee wishes to participate in the annuity benefit program. Within 30 days  
11 after receipt of the written request, the governing body shall adopt the resolution of intention and take action as  
12 provided for in [section 9].

13  
14 **Section 11.** Section 19-2-303, MCA, is amended to read:  
15 **"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems  
16 subject to this chapter, the following definitions apply:

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

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

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

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

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

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

30 (7) "Additional contributions" means contributions made by a member of a defined benefit plan to

1 purchase various types of optional service credit as allowed by the applicable retirement plan.

2 (8) "Annuity" means:

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

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

7 (9) "Annuity benefit program" means the program provided for in [sections 1 through 10].

8 ~~(9)~~(10) "Benefit" means:

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

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

14 ~~(10)~~(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

15 ~~(11)~~(12) "Contingent annuitant" means:

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

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

20 ~~(12)~~(13) "Covered employment" means employment in a covered position.

21 ~~(13)~~(14) "Covered position" means a position in which the employee must be a member of the retirement  
22 system except as otherwise provided by law.

23 ~~(14)~~(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement  
24 systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

25 ~~(15)~~(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the  
26 public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title  
27 and that is not a defined benefit plan.

28 ~~(16)~~(17) "Department" means the department of administration.

29 ~~(17)~~(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the  
30 benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits,

1 lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient,  
2 including annuities derived from the benefits or payments.

3 ~~(18)~~(19) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the  
4 distributee.

5 ~~(19)~~(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties  
6 by reason of physical or mental incapacity. The disability must be incurred while the member is an active member  
7 and must be one of permanent duration or of extended and uncertain duration, as determined by the board on  
8 the basis of competent medical opinion.

9 ~~(20)~~(21) "Distributee" means:

10 (a) a member;

11 (b) a member's surviving spouse;

12 (c) a member's spouse or former spouse who is the alternate payee under a family law order as defined  
13 in 19-2-907; or

14 (d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as  
15 defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

16 ~~(24)~~(22) "Early retirement benefit" means the retirement benefit payable to a member following early  
17 retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

18 ~~(22)~~(23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover  
19 distribution:

20 (a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C.  
21 408(a);

22 (b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C.  
23 408(b);

24 (c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

25 (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

26 (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue  
27 Code, 26 U.S.C. 403(b);

28 (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26  
29 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of  
30 a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan

1 from a plan under this title; or

2 (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26  
3 U.S.C. 408A.

4 ~~(23)~~(24) "Eligible rollover distribution":

5 (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the  
6 distributee, as provided in 19-2-1011;

7 (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former  
8 spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal  
9 Revenue Code, 26 U.S.C. 414(p).

10 ~~(24)~~(25) "Employee" means a person who is employed by an employer in any capacity and whose salary  
11 is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying  
12 retirement contributions pursuant to 7-11-105.

13 ~~(25)~~(26) "Employer" means a governmental agency participating in a retirement system enumerated in  
14 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as  
15 responsible for paying retirement contributions pursuant to 7-11-105.

16 ~~(26)~~(27) "Essential elements of the position" means fundamental job duties. An element may be  
17 considered essential because of but not limited to the following factors:

18 (a) the position exists to perform the element;

19 (b) there are a limited number of employees to perform the element; or

20 (c) the element is highly specialized.

21 ~~(27)~~(28) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the  
22 following June 30.

23 ~~(28)~~(29) "Inactive member" means a member who terminates service and does not retire or take a refund  
24 of the member's accumulated contributions.

25 (30) "Initially hired" or "initially employed" means the earliest date on which an individual is first hired into  
26 or employed in a covered position, which may not necessarily be an employee's current covered position.

27 ~~(29)~~(31) "Internal Revenue Code" has the meaning provided in 15-30-2101.

28 ~~(30)~~(32) (a) "Member" means either:

29 ~~(a)~~(i) a person with accumulated contributions and service credited with a defined benefit retirement plan  
30 prior to July 1, 2012, or receiving a retirement benefit on account of the person's previous service credited in a

1 retirement system; or

2 ~~(b)~~(ii) a person with a retirement account in the defined contribution plan before July 1, 2012.

3 (b) The term does not include a person who is initially hired into covered employment on or after July  
4 1, 2012, or who initially assumes an elected office on or after July 1, 2012, for which membership is required or  
5 optional.

6 ~~(34)~~(33) "Membership service" means the periods of service that are used to determine eligibility for  
7 retirement or other benefits.

8 ~~(32)~~(34) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost  
9 method required to fund accruing benefits for members of a defined benefit retirement plan during any year in  
10 the future.

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

12 ~~(33)~~(35) "Normal retirement age" means the age at which a member is eligible to immediately receive  
13 a retirement benefit based on the member's age, length of service, or both, as specified under the member's  
14 retirement system, without disability and without an actuarial or similar reduction in the benefit.

15 ~~(34)~~(36) "Pension" means benefit payments for life derived from contributions to a retirement plan made  
16 from state- or employer-controlled funds.

17 ~~(35)~~(37) "Pension trust fund" means a fund established to hold the contributions, income, and assets of  
18 a retirement system or plan in public trust.

19 ~~(36)~~(38) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll  
20 covered by the defined contribution plan members that is allocated to the public employees' retirement system's  
21 defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially  
22 fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member  
23 selection of the defined contribution plan.

24 ~~(37)~~(39) "Regular contributions" means contributions required from members under a retirement plan.

25 ~~(38)~~(40) "Regular interest" means interest at rates set from time to time by the board.

26 ~~(39)~~(41) "Retirement" or "retired" means the status of a member who has:

27 (a) terminated from service; and

28 (b) received and accepted a retirement benefit from a retirement plan.

29 ~~(40)~~(42) "Retirement account" means an individual account within the defined contribution retirement plan  
30 for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of

1 the defined contribution plan or the member's beneficiary.

2 ~~(41)~~(43) "Retirement benefit" means:

3 (a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement,  
4 early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a  
5 defined benefit plan, the term does not mean an annuity.

6 (b) in the case of the defined contribution plan, a benefit as defined in subsection ~~(9)(b)~~ (10)(b).

7 ~~(42)~~(44) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan  
8 under one of the public employee retirement systems enumerated in 19-2-302.

9 ~~(43)~~(45) "Retirement system" or "system" means one of the public employee retirement systems  
10 enumerated in 19-2-302.

11 ~~(44)~~(46) "Service" means employment of an employee in a position covered by a retirement system.

12 ~~(45)~~(47) "Service credit" means the periods of time for which the required contributions have been made  
13 to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined  
14 benefit retirement plan.

15 ~~(46)~~(48) "Service retirement benefit" means the retirement benefit that the member may receive at normal  
16 retirement age.

17 ~~(47)~~(49) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member  
18 of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are  
19 statutorily designated to receive benefits upon the death of the member.

20 ~~(48)~~(50) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement  
21 plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to  
22 the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or  
23 otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the  
24 unfunded actuarial liabilities of the retirement plan.

25 ~~(49)~~(51) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a  
26 deceased member who died while in service under a defined benefit retirement plan.

27 ~~(50)~~(52) "Termination of employment", "termination from employment", "terminated employment",  
28 "terminated from employment", "terminate employment", or "terminates employment" means that:

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

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

3 ~~(51)~~(53) "Termination of service", "termination from service", "terminated from service", "terminated  
4 service", "terminating service", or "terminates service" means that:

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

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

8 (c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to  
9 which the member was entitled. For the purposes of this subsection ~~(51)~~ (53), compensation does not mean  
10 compensation as a result of a legal action, court order, or settlement to which the board was not a party.

11 ~~(52)~~(54) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit  
12 retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that  
13 same date.

14 ~~(53)~~(55) "Vested account" means an individual account within a defined contribution plan that is for the  
15 exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the  
16 income on all contributions in each of the following accounts:

17 (a) the member's contribution account;

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

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

20 ~~(54)~~(56) "Vested member" or "vested" means:

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

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

25 ~~(55)~~(57) "Written application" or "written election" means a written instrument, prescribed by the board  
26 or required by law, properly signed and filed with the board, that contains all required information, including  
27 documentation that the board considers necessary.

28 ~~(56)~~(58) "Written instrument" includes an electronic record containing an electronic signature, as defined  
29 in 30-18-102."

30

1           **Section 12.** Section 19-3-319, MCA, is amended to read:

2           **"19-3-319. State contributions for local government and school district employers.** (1) ~~The~~ Except  
3 for those employees properly excluded from membership, the state shall contribute monthly from the general fund  
4 to the pension trust fund a sum equal to 0.1% of the compensation paid to all employees of local government  
5 entities and school districts on and after July 1, 1997, except those employees properly excluded from  
6 membership.

7           (2) (a) Subject to subsection (2)(b), in addition to the contribution required under subsection (1), the state  
8 shall contribute monthly from the general fund to the pension trust fund a sum equal to the following percentage  
9 of the compensation paid to all employees of school districts on and after July 1, 2007, except for those  
10 employees properly excluded from membership:

11           (i) beginning July 1, 2007, 0.135%; and

12           (ii) beginning July 1, 2009, 0.27%.

13           (b) The additional contribution under subsection (2)(a) terminates when the additional contribution under  
14 19-3-316(3) terminates.

15           (3) The board shall certify amounts due under this section on a monthly basis, and the state treasurer  
16 shall transfer those amounts to the pension trust fund within 1 week. The payments in this section are statutorily  
17 appropriated as provided in 17-7-502."

18

19           **Section 13.** Section 19-3-401, MCA, is amended to read:

20           **"19-3-401. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as  
21 provided in subsection (6) and as otherwise provided in this chapter, all employees must become members of  
22 the defined benefit plan on the first day of service. Each employer shall file with the board information affecting  
23 their employees' status as members as the board may require. An employee may become a member of the  
24 defined contribution plan only as provided in Title 19, chapter 3, part 21.

25           (2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an  
26 inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit  
27 subject to the provisions of this chapter.

28           (b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather  
29 than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and  
30 not the employer's contributions.

1 (3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is  
2 an inactive nonvested member and is not eligible for any benefits from the retirement plan.

3 (b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's  
4 accumulated contributions.

5 (4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the  
6 defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for  
7 benefit payments if the member either:

8 (a) returns to service within 30 days of termination of employment; or

9 (b) terminates one employment but remains employed in another position covered by the system.

10 (5) ~~Time~~ The time during which an employee of a school district or a public institution of higher education  
11 is absent from service during official vacation is counted as membership service in determining eligibility for  
12 retirement benefits.

13 (6) (a) An employee initially hired on or after July 1, 2012, becomes a participant in the annuity benefit  
14 program.

15 (b) Subsection (6)(a) does not affect the rights or responsibilities of a person who is a member, retiree,  
16 or beneficiary of a defined benefit plan provided for in Title 19, the defined contribution plan provided for in Title  
17 19, chapter 3, part 21, or the optional retirement program provided for in Title 19, chapter 21, before July 1, 2012."

18

19 **Section 14.** Section 19-3-412, MCA, is amended to read:

20 **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and subsection (2) of this section,  
21 the following employees and elected officials ~~in~~ initially hired, initially appointed, or initially elected for covered  
22 positions before July 1, 2012, shall elect either to become active members of the retirement system or to decline  
23 this optional membership by filing an irrevocable, written application with the board in the manner prescribed in  
24 subsection (3):

25 (a) elected officials of the state or local governments, including individuals appointed to fill the unexpired  
26 term of elected officials, who:

27 (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

28 (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the  
29 defined contribution plan at the time of their election;

30 (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered

- 1 employment with all employers under this chapter in any fiscal year;
- 2 (c) employees directly appointed by the governor;
- 3 (d) employees working 10 months or less for the legislative branch to perform work related to the  
4 legislative session;
- 5 (e) the chief administrative officer of any city or county;
- 6 (f) employees of county hospitals or rest homes.
- 7 (2) A member who is elected to a local government position in which the member works less than 960  
8 hours in a calendar year may, within 90 days of being elected, decline optional membership with respect to the  
9 member's elected position.
- 10 (3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1)  
11 and provide written application forms to each employer.
- 12 (b) Each employee or elected official in a position covered under subsection (1) shall obtain the written  
13 application form from the employer and complete and return it to the board.
- 14 (c) The written application must be filed with the board:
- 15 (i) for an employee described in subsection (1)(d), within 90 days of the commencement of the  
16 employee's employment; and
- 17 (ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within  
18 90 days of the commencement of the employee's or elected official's employment.
- 19 (d) The employer shall retain a copy of the employee's or elected official's written application.
- 20 (4) If the employee or elected official fails to file the written application required under subsection (1) with  
21 the board within the time allowed in subsection (3), the employee or elected official waives membership.
- 22 (5) An employee or elected official who declines optional membership may not receive membership  
23 service or service credit for the employment for which membership was declined.
- 24 (6) An employee or elected official who declined optional membership but ~~later~~ before July 1, 2012,  
25 becomes a member may purchase service credit for the period of time beginning with the date of employment  
26 in which membership was declined to the commencement of membership. Purchase of service credit pursuant  
27 to this subsection must comply with 19-3-505.
- 28 (7) Except as provided in subsection (2), membership in the retirement system is not optional for an  
29 employee or elected official who is already a member. Upon employment in a position for which membership is  
30 optional:

- 1 (a) a member who was an active member before the employment remains an active member;
- 2 (b) a member who was an inactive member before the employment becomes an active member; and
- 3 (c) a member who was a retired member before the employment is subject to part 11 of this chapter.
- 4 (8) (a) An employee who declines membership for a position for which membership is optional may not
- 5 later become a member while still employed with the same employer but in a different optional membership
- 6 position.
- 7 (b) An elected official who declines membership for a position for which membership is optional may not
- 8 later become a member if reelected to the same optional membership position.
- 9 (c) If, after a break in service of 30 days or more, an employee who was employed in an optional
- 10 membership position is reemployed in the same position or is employed in a different position for which
- 11 membership is optional, the employee shall again choose or decline membership if the employee is reemployed
- 12 before July 1, 2012.
- 13 (d) If the break in service is less than 30 days, an employee who declined membership is bound by the
- 14 employee's original decision to decline membership.
- 15 (9) An employee accepting a position that requires membership must become a member even if the
- 16 employee previously declined membership and did not have a 30-day break in service."

- 17
- 18 **Section 15.** Section 19-5-301, MCA, is amended to read:
- 19 **"19-5-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except for
- 20 a judge or justice who elected in writing to remain under the public employees' retirement system on or before
- 21 October 1, 1985, and except as provided in subsection (5), a judge of a district court, a justice of the supreme
- 22 court, and the chief water judge provided for in 3-7-221 must be members of the Montana judges' retirement
- 23 system.
- 24 (2) A judge pro tempore is not eligible for active membership in the retirement system.
- 25 (3) A member with at least 5 years of membership service who terminates service and does not take a
- 26 refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase
- 27 service credit and to receive a retirement benefit under the provisions of this chapter.
- 28 (4) A member with less than 5 years of membership service who terminates service and leaves the
- 29 member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible
- 30 for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the

1 member's accumulated contributions.

2 (5) (a) A member initially hired on or after July 1, 2012, becomes a participant in the annuity benefit  
3 program.

4 (b) Subsection (5)(a) does not affect the rights or responsibilities of a person who is a member, retiree,  
5 or beneficiary of the judges' retirement system on July 1, 2012."

6

7 **Section 16.** Section 19-6-301, MCA, is amended to read:

8 **"19-6-301. Membership -- inactive vested members -- inactive nonvested members.** (1) ~~At~~ Except  
9 as provided in subsection (4), all members of the Montana highway patrol, including the supervisor and assistant  
10 supervisors, must be members of the retirement system.

11 (2) (a) An inactive member with at least 5 years of membership service is an inactive vested member  
12 and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

13 (b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit,  
14 the lump-sum payment consists of only the member's accumulated contributions and not the employer's  
15 contributions.

16 (3) (a) An inactive member with less than 5 years of membership service is an inactive nonvested  
17 member and is not eligible for any benefits from the retirement system.

18 (b) An inactive nonvested member is eligible only for a refund of the member's accumulated  
19 contributions.

20 (4) (a) A member initially hired on or after July 1, 2012, becomes a participant in the annuity benefit  
21 program.

22 (b) Subsection (4)(a) does not affect the rights or responsibilities of a person who is a member, retiree,  
23 or beneficiary of the highway patrol officers' retirement system on July 1, 2012."

24

25 **Section 17.** Section 19-7-301, MCA, is amended to read:

26 **"19-7-301. Membership -- inactive vested members -- inactive nonvested members.** (1) (a) Except  
27 as provided in ~~subsection~~ subsections (1)(b) and (8), each sheriff shall become a member of the sheriffs'  
28 retirement system.

29 (b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain  
30 a public employees' retirement system member or elect to become a member of the sheriffs' retirement system

1 by filing a written election with the board at any time before retirement.

2 (2) (a) Except as provided in ~~subsection~~ subsections (2)(b) and (8), an investigator shall become a  
3 member of the sheriffs' retirement system.

4 (b) An investigator who was a member of the public employees' retirement system on July 1, 1993, may  
5 remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system  
6 by filing a written election with the board at any time before retirement.

7 (3) (a) Except as provided in ~~subsection~~ subsections (3)(b) and (8), a detention officer shall become a  
8 member of the sheriffs' retirement system.

9 (b) A detention officer who was a member of the public employees' retirement system on July 1, 2005,  
10 may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement  
11 system by filing a written election with the board before May 1, 2006.

12 (4) A member of the public employees' retirement system who begins employment in a position covered  
13 by the sheriffs' retirement system before July 1, 2012, may remain in the public employees' retirement system  
14 or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no  
15 later than 30 days after beginning the employment.

16 (5) A sheriff or investigator who elects to become a member of the sheriffs' retirement system must be  
17 an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

18 (6) (a) An inactive member with at least 5 years of membership service is an inactive vested member  
19 and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this  
20 chapter.

21 (b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit,  
22 the lump-sum payment consists of only the member's accumulated contributions and not the employer's  
23 contributions.

24 (7) (a) An inactive member with less than 5 years of membership service is an inactive nonvested  
25 member and is not eligible for any benefits from the retirement system.

26 (b) An inactive nonvested member is eligible only for a refund of the member's accumulated  
27 contributions.

28 (8) (a) A person initially hired on or after July 1, 2012, who would have become a member of the sheriffs'  
29 retirement system becomes a participant in the annuity benefit program.

30 (b) Subsection (8)(a) does not affect the rights or responsibilities of a person who is a member, retiree,

1 or beneficiary of the sheriffs' retirement system on July 1, 2012."

2

3 **Section 18.** Section 19-7-302, MCA, is amended to read:

4 **"19-7-302. Ineligibility for membership in public employees' retirement system.** (1) After July 1,  
5 1974, a sheriff may not become a member of the defined benefit plan within the public employees' retirement  
6 system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs who are  
7 members of the sheriffs' retirement system.

8 (2) After July 1, 1993, an investigator is not eligible to become a member of the defined benefit plan  
9 within the public employees' retirement system and the provisions of The Public Employees' Retirement System  
10 Act do not apply to investigators who are members of the sheriffs' retirement system, except as provided in  
11 19-7-301.

12 (3) After July 1, 2005, a detention officer is not eligible to become a member of the defined benefit plan  
13 within the public employees' retirement system and the provisions of The Public Employees' Retirement System  
14 Act do not apply to detention officers who are members of the sheriffs' retirement system, except as provided in  
15 19-7-301.

16 (4) This chapter may not be construed to deny any sheriff, ~~or~~ investigator, or detention officer any  
17 benefits accrued under provisions of the public employees' retirement system prior to membership in this  
18 retirement system."

19

20 **Section 19.** Section 19-8-301, MCA, is amended to read:

21 **"19-8-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as  
22 provided in 19-8-302 and subsection (2) of this section, the following state peace officers must be covered under  
23 the game wardens' and peace officers' retirement system and, beginning on the first day of employment, must  
24 become and shall remain active members for as long as they are employed as peace officers:

25 (a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

26 (b) motor carrier officers employed by the department of transportation;

27 (c) campus security officers employed by the university system;

28 (d) wardens and deputy wardens employed by the department of corrections;

29 (e) corrections officers employed by the department of corrections;

30 (f) probation and parole officers employed by the department of corrections;

1 (g) stock inspectors and detectives employed by the department of livestock; and

2 (h) drill instructors employed by the department of corrections.

3 (2) (a) A person initially hired on or after July 1, 2012, who would have become a member of the game  
4 wardens' and peace officers' retirement system becomes a participant in the annuity benefit program.

5 (b) Subsection (2)(a) does not affect the rights or responsibilities of a person who is a member, retiree,  
6 or beneficiary of the game wardens' and peace officers' retirement system on July 1, 2012.

7 ~~(2)(3)~~ (a) An inactive member with at least 5 years of membership service is an inactive vested member  
8 and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this  
9 chapter.

10 (b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit,  
11 the lump-sum payment consists of only the member's accumulated contributions and not the employer's  
12 contributions.

13 ~~(3)(4)~~ (a) An inactive member with less than 5 years of membership service is an inactive nonvested  
14 member and is not eligible for any benefits from the retirement system.

15 (b) An inactive nonvested member is eligible only for a refund of the member's accumulated  
16 contributions."

17

18 **Section 20.** Section 19-8-302, MCA, is amended to read:

19 **"19-8-302. Public employees' retirement system -- transfer of membership.** (1) Except as provided  
20 in ~~subsection~~ subsections (3) and (4), an eligible peace officer must become a member of the game wardens'  
21 and peace officers' retirement system on the first day of service.

22 (2) A person who is a member of the game wardens' and peace officers' retirement system assigned  
23 to law enforcement who transfers to a position involving duties other than law enforcement within the same state  
24 agency may retain membership in the game wardens' and peace officers' retirement system by filing a written  
25 election with the board no later than 30 days after transfer to the new position.

26 (3) A person who is a member of the public employees' retirement system prior to July 1, 2012, and who  
27 transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become  
28 a member of the game wardens' and peace officers' retirement system or may continue membership in the public  
29 employees' retirement system by filing a written election with the board no later than 30 days after transfer to the  
30 new position.

1           (4) (a) Each person initially hired on or after July 1, 2012, who would have become a member of the  
2 game wardens' and peace officers' retirement system becomes a participant in the annuity benefit program.

3           (b) Subsection (4)(a) does not affect the rights or responsibilities of a person who is a member, retiree,  
4 or beneficiary of the game wardens' and peace officers' retirement system on July 1, 2012."

5

6           **Section 21.** Section 19-9-301, MCA, is amended to read:

7           **"19-9-301. Active membership -- inactive vested member -- inactive nonvested member. (1) A**

8 Except as provided in subsection (6), a police officer becomes an active member of the retirement system:

9           (a) on the date the police officer's service with an employer commences;

10           (b) on July 1, 1977, if the police officer is employed by an employer on that date; or

11           (c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the  
12 effective date of the election if the police officer is employed by the employer on that date and the employer joined  
13 the system before July 1, 2012. A person who is a member of the public employees' retirement system prior to  
14 July 1, 2012, and who remains a member on the date of the employer's election may remain in the public  
15 employees' retirement system or may elect to become a member of the municipal police officers' retirement  
16 system by filing an irrevocable written election with the board no later than 90 days after the date of the  
17 employer's election.

18           (2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the  
19 proof required by the board.

20           (3) A member becomes an inactive member on the first day of an approved absence from service of a  
21 substantial duration.

22           (4) (a) An inactive member with at least 5 years of membership service is an inactive vested member  
23 and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this  
24 chapter.

25           (b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit,  
26 the lump-sum payment consists of only the member's accumulated contributions and not the employer  
27 contributions.

28           (5) (a) An inactive member with less than 5 years of membership service is an inactive nonvested  
29 member and is not eligible for any benefits from the retirement system.

30           (b) An inactive nonvested member is eligible only for a refund of the member's accumulated

1 contributions.

2 (6) (a) Each person initially hired on or after July 1, 2012, who would have become a member of the  
 3 municipal police officers' retirement system or the public employees' retirement system becomes a participant  
 4 in the annuity benefit program.

5 (b) Subsection (6)(a) does not affect the rights or responsibilities of a person who is a member, retiree,  
 6 or beneficiary of the municipal police officers' retirement system on July 1, 2012."

7

8 **Section 22.** Section 19-13-301, MCA, is amended to read:

9 **"19-13-301. Active membership -- inactive vested member -- inactive nonvested member. (1)**

10 Except as provided in ~~subsection~~ subsections (7) and (9), a full-paid firefighter becomes an active member of the  
 11 retirement system:

12 (a) on the first day of the firefighter's service with an employer;

13 (b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

14 (c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the  
 15 effective date of the election if the firefighter is employed by the employer on that date and the employer joined  
 16 the system before July 1, 2012.

17 (2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof  
 18 required by the board.

19 (3) A part-paid firefighter:

20 (a) who was a part-paid firefighter before July 1, 2012, may elect to become a member of the retirement  
 21 system by filing an irrevocable written election with the board within 90 days of becoming a part-paid firefighter;  
 22 or

23 (b) who becomes a part-paid firefighter on or after July 1, 2012, may elect to become a participant in the  
 24 annuity benefit program provided in [sections 1 through 10] by filing a membership application with the board  
 25 within 6 months of becoming a part-paid firefighter.

26 (4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

27 (a) the date on which the member ceases service with an employer;

28 (b) the 31st day of an approved absence from active duty with an employer; or

29 (c) the date on which the member ceases to be employed because of a reduction of the number of  
 30 firefighters in the fire department as provided in 7-33-4125.

1 (5) (a) An inactive member with at least 5 years of membership service is an inactive vested member  
2 and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this  
3 chapter.

4 (b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit,  
5 the lump-sum payment consists of only the member's accumulated contributions and not the employer's  
6 contributions.

7 (6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested  
8 member and is not eligible for any benefits from the retirement system.

9 (b) An inactive nonvested member is eligible only for a refund of the member's accumulated  
10 contributions.

11 (7) (a) A firefighter previously employed in a position covered under the public employees' retirement  
12 system and who is first hired into a position covered under the firefighters' unified retirement system after attaining  
13 45 years of age may elect to remain in the public employees' retirement system.

14 (b) A firefighter making an irrevocable election to remain in the public employees' retirement system shall  
15 make the election in a manner prescribed by the board within 90 days of being hired into the position otherwise  
16 covered under the firefighters' unified retirement system.

17 (8) A retired member who is receiving a service retirement benefit or early retirement benefit may return  
18 to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year  
19 without returning to active service and without any effect to the retiree's retirement benefit.

20 (9) (a) Each person initially hired on or after July 1, 2012, who would have become a member of the  
21 firefighters' unified retirement system becomes a participant in the annuity benefit program.

22 (b) Subsection (9)(a) does not affect the rights or responsibilities of a person who is a member, retiree,  
23 or beneficiary of the firefighters' unified retirement system on July 1, 2012."

24

25 **Section 23.** Section 19-20-101, MCA, is amended to read:

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

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

1 retirement.

2 (2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality  
3 table and interest rate assumption set by the retirement board.

4 (3) "Average final compensation" means the average of a member's earned compensation during the  
5 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on  
6 which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been  
7 converted by an employer to earned compensation for all members and have been continuously reported as  
8 earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the  
9 amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b)  
10 have been reported as earned compensation for less than 5 fiscal years or if the member has been given the  
11 option to have amounts reported as earned compensation, any amounts reported in the 3-year period that  
12 constitute average final compensation must be included in average final compensation as provided under  
13 19-20-716(1)(b).

14 (4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit  
15 recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

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

17 (6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of  
18 maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer  
19 before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's  
20 compensation.

21 (b) Earned compensation does not mean:

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

25 (ii) any direct employer payment or reimbursement for:

26 (A) professional membership dues;

27 (B) maintenance;

28 (C) housing;

29 (D) day care;

30 (E) automobile, travel, lodging, or entertaining expenses; or

- 1 (F) any similar payment for any form of maintenance, allowance, or expenses;  
2 (iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or  
3 (iv) any noncash benefit provided by an employer to or on behalf of an employee.  
4 (c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.  
5 (d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same  
6 or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.  
7 (e) Earned compensation does not include:  
8 (i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of  
9 the Internal Revenue Code, 26 U.S.C. 457(f);  
10 (ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in  
11 excess of that normally allowed; or  
12 (iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.  
13 (7) "Employer" means:  
14 (a) the state of Montana;  
15 (b) a public school district, as provided in 20-6-101 and 20-6-701;  
16 (c) the office of public instruction;  
17 (d) the board of public education;  
18 (e) an education cooperative;  
19 (f) the Montana school for the deaf and blind, as described in 20-8-101;  
20 (g) the Montana youth challenge program, as defined in 10-1-101;  
21 (h) a state youth correctional facility, as defined in 41-5-103;  
22 (i) the Montana university system;  
23 (j) a community college; or  
24 (k) any other agency or subdivision of the state that employs a person who is designated a member of  
25 the retirement system pursuant to 19-20-302.  
26 (8) "Full-time service" means service that is:  
27 (a) at least 180 days in a fiscal year;  
28 (b) at least 140 hours a month during 9 months in a fiscal year; or  
29 (c) full-time under an alternative school calendar adopted by a school board that is less than 180 days  
30 but meets minimum accreditation requirements of 1,080 hours.

1           (9) "Initially hired" means the earliest date on which an individual is first hired into or employed in a  
2 position covered by the retirement system, which may not necessarily be an employee's current covered position.

3           ~~(9)~~(10) "Internal Revenue Code" has the meaning provided in 15-30-2101.

4           ~~(10)~~(11) "Member" means a person who has an individual account in the annuity savings account. An  
5 active member is a person included under the provisions of 19-20-302. An inactive member is a person included  
6 under the provisions of 19-20-303.

7           ~~(11)~~(12) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the  
8 lifetime of the retired member.

9           ~~(12)~~(13) "Normal retirement age" means an age no earlier than 55 years of age, with the right to receive  
10 immediate retirement benefits without an actuarial reduction in the benefits.

11           ~~(13)~~(14) "Part-time service" means service that is less than 180 days in a fiscal year or less than 140  
12 hours a month during 9 months in a fiscal year. Part-time service must be credited in the proportion that the actual  
13 time worked compares to full-time service.

14           ~~(14)~~(15) "Regular interest" means interest at a rate set by the retirement board in accordance with  
15 19-20-501(2).

16           ~~(15)~~(16) "Retired member" means a person who has terminated employment that qualified the person  
17 for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant  
18 to this chapter.

19           ~~(16)~~(17) "Retirement allowance" means a monthly payment due to a person who has qualified for service  
20 or disability retirement or due to a beneficiary as provided in 19-20-1001.

21           ~~(17)~~(18) "Retirement board" or "board" means the retirement system's governing board provided for in  
22 2-15-1010.

23           ~~(18)~~(19) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of  
24 Montana provided for in 19-20-102.

25           ~~(19)~~(20) "Service" means the performance of instructional duties or related activities that would entitle  
26 the person to active membership in the retirement system under the provisions of 19-20-302.

27           ~~(20)~~(21) "Termination" or "terminate" means that the member has severed the employment relationship  
28 with the member's employer and that all, if any, payments due upon termination of employment, including but not  
29 limited to accrued sick and annual leave balances, have been paid to the member.

30           ~~(21)~~(22) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay,

1 amounts provided under a window or early retirement incentive plan, or other payments contingent on the  
 2 employee terminating employment and on which employee and employer contributions have been paid as  
 3 required by 19-20-716.

4 (b) Termination pay does not include:

5 (i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without  
 6 regard to the wage base limitation; and

7 (ii) amounts that are payable to a member from a plan for the deferral of compensation under section  
 8 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

9 ~~(22)~~(23) "Vested" means that a member has been credited with at least 5 full years of membership  
 10 service upon which contributions have been made, as required by 19-20-602, 19-20-605, and 19-20-607, and  
 11 who has a right to a future retirement benefit.

12 ~~(23)~~(24) "Written application" or "written election" means a written instrument, required by statute or the  
 13 rules of the board, properly signed and filed with the board, that contains all the required information, including  
 14 documentation that the board considers necessary."  
 15

16 **Section 24.** Section 19-20-302, MCA, is amended to read:

17 "**19-20-302. Active membership.** (1) ~~(a) Unless~~ Prior to July 1, 2012, and unless otherwise provided  
 18 by this chapter, the following persons employed by an employer must be active members of the retirement  
 19 system:

20 ~~(a)~~(i) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

21 ~~(b)~~(ii) a person who is an administrative officer or a member of the instructional or scientific staff of a unit  
 22 of the Montana university system and who has not elected or is not required to participate in the optional  
 23 retirement program under Title 19, chapter 21;

24 ~~(c)~~(iii) a person employed as a speech-language pathologist, school nurse, professionally qualified  
 25 person as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school  
 26 psychologist;

27 ~~(d)~~(iv) a person employed in a teaching or an educational services capacity by the office of a county  
 28 superintendent, an education cooperative, a public institution of the state of Montana, the Montana state school  
 29 for the deaf and blind, or a school district;

30 ~~(e)~~(v) a person who is an administrative officer or a member of the instructional staff of the board of

1 public education;

2 ~~(f)~~(vi) the superintendent of public instruction or a person employed as a teacher or in an educational  
3 services capacity by the office of public instruction;

4 ~~(g)~~(vii) except as provided in subsection (2), a person elected to the office of county superintendent of  
5 schools;

6 ~~(h)~~(viii) a person who is an administrative officer or a member of the instructional or scientific staff of a  
7 community college; and

8 ~~(i)~~(ix) a person employed in a nonclerical position and who is reported on an employer's annual data  
9 collection report submitted to the office of public instruction.

10 (b) (i) Beginning on July 1, 2012, a person who is initially hired into any position or in a capacity  
11 described in subsection (1)(a) and who is not a member of the teachers' retirement system is a participant in the  
12 annuity benefit program.

13 (ii) Subsection (1)(b)(i) does not affect the rights or responsibilities of a person who is a member, retiree,  
14 or beneficiary of the teachers' retirement system on July 1, 2012.

15 (2) (a) A retired member elected to the office of county superintendent of schools or appointed to  
16 complete the term of an elected county superintendent of schools after July 1, 1995, and before July 1, 2012, is  
17 not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412  
18 and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active  
19 member of the teachers' retirement system.

20 (b) The retirement system membership of an elected county superintendent of schools as of June 30,  
21 1995, must remain unchanged for as long as the person continues to serve in the capacity of county  
22 superintendent of schools.

23 (c) Beginning on July 1, 2012, a retired member who has not previously made and is not otherwise  
24 eligible to make an election under this section and who is elected to the office of county superintendent of schools  
25 or appointed to complete the term of an elected county superintendent of schools shall, within 30 days of taking  
26 office, file an irrevocable written election to become or not to become a participant in the annuity benefit program.

27 (3) In order to be eligible for active membership, a person described in subsection (1) or (2)(a) must have  
28 been a member prior to July 1, 2012, and must:

29 (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal  
30 year; and

- 1 (b) have the compensation for the person's creditable service totally paid by an employer.
- 2 (4) (a) ~~(i)~~ Prior to July 1, 2012, a substitute teacher or a part-time teacher's aide:
- 3 ~~(i)(A)~~ shall file an irrevocable written election determining whether to become an active member of the
- 4 retirement system on the first day of employment; or
- 5 ~~(ii)(B)~~ is required to become an active member of the retirement system after completing 210 hours of
- 6 employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership
- 7 under subsection (4)(a)(i)~~(A)~~.
- 8 ~~(b)(ii)~~ Once a part-time teacher's aide becomes a member, the aide is required to remain an active
- 9 member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the
- 10 substitute teacher is required to remain a member as long as the teacher is available for employment in that
- 11 capacity.
- 12 ~~(c)(iii)~~ The employer shall give written notification to a substitute teacher or part-time teacher's aide on
- 13 the first day of employment of the option to elect membership under subsection (4)(a)(i)~~(A)~~.
- 14 ~~(d)(iv)~~ If a substitute teacher or part-time teacher's aide declines to elect membership during the election
- 15 period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership
- 16 and the employer shall retain the statement.
- 17 (b) (i) A person who is initially hired on or after July 1, 2012, as a substitute teacher or a part-time
- 18 teacher's aide:
- 19 (A) shall file an irrevocable written election determining whether to become or not to become a participant
- 20 in the annuity benefit program on the first day of employment; or
- 21 (B) is required to become an active member of the defined contribution plan after completing 210 hours
- 22 of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership
- 23 under subsection (4)(b)(i)(A).
- 24 (ii) Once a part-time teacher's aide becomes a member of the defined contribution plan, the aide is
- 25 required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher
- 26 becomes a member, the substitute teacher is required to remain a member as long as the teacher is available
- 27 for employment in that capacity.
- 28 (iii) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the
- 29 first day of employment of the option to elect membership under subsection (4)(b)(i)(A).
- 30 (iv) If a substitute teacher or part-time teacher's aide declines to elect membership during the election

1 period, the substitute teacher or part-time teacher's aide shall file a written statement with the employer waiving  
 2 membership. The employer shall retain the statement.

3 (v) This subsection (4)(b) does not affect the rights or responsibilities of a person who is a member,  
 4 retiree, or beneficiary of the teachers' retirement system on July 1, 2012.

5 (5) (a) A school district clerk or business official may not become a member of the teachers' retirement  
 6 system.

7 (b) A school district clerk or business official who is a member of the system on July 1, 2001, and who  
 8 remains a member on July 1, 2012, is required to remain an active member of the system while employed in that  
 9 capacity, and any postretirement earnings from employment as a school district clerk or school business official  
 10 are subject to the limit on earnings provided in 19-20-731.

11 (c) (i) A person who is initially employed on or after July 1, 2012, as a school district clerk or business  
 12 official is required to become a participant in the annuity benefit program.

13 (ii) Subsection (5)(c)(i) does not affect the rights or responsibilities of a person who is a member, retiree,  
 14 or beneficiary of the teachers' retirement system on July 1, 2012.

15 (6) At any time that a person's eligibility to become a member of the teachers' retirement system is in  
 16 doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar  
 17 circumstances must be treated alike.

18 (7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours  
 19 a day assisting a certified teacher in a classroom.

20 (8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b)  
 21 may not elect to participate in the optional retirement program under Title 19, chapter 21.

22 (b) An employee of the Montana university system who is a participant in the optional retirement program  
 23 under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a)(i) or  
 24 ~~(1)(e)~~ ~~(1)(a)(iii)~~ through ~~(1)(f)~~ ~~(1)(a)(ix)~~ is ineligible to be an active member of ~~this~~ the teachers' retirement system."

25

26 **Section 25.** Section 20-9-501, MCA, is amended to read:

27 **"20-9-501. Retirement costs and retirement fund.** (1) The trustees of a district or the management  
 28 board of a cooperative employing personnel who are members of the teachers' retirement system or the public  
 29 employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal  
 30 social security system requiring employer contributions shall establish a retirement fund for the purposes of

1 budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's  
2 or the cooperative's contribution for each employee who is a member of the teachers' retirement system must  
3 be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for  
4 each employee who is a member of the public employees' retirement system must be calculated in accordance  
5 with [section 5] or 19-3-316. The district's or the cooperative's contributions for each employee covered by any  
6 federal social security system must be paid in accordance with federal law and regulation. The district's or the  
7 cooperative's contribution for each employee who is covered by unemployment insurance must be paid in  
8 accordance with Title 39, chapter 51, part 11.

9 (2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal  
10 social security, and unemployment insurance systems from the retirement fund for the following:

11 (i) a district employee whose salary and health-related benefits, if any health-related benefits are  
12 provided to the employee, are paid from state or local funding sources;

13 (ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are  
14 provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported  
15 solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321,  
16 or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the  
17 medicaid program, pursuant to 53-6-101;

18 (iii) a district employee whose salary and health-related benefits, if any health-related benefits are  
19 provided to the employee, are paid from the district's school food services fund provided for in 20-10-204;

20 (iv) a district employee whose salary and health-related benefits, if any health-related benefits are  
21 provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514; and

22 (v) for the 2011 biennium only, a district employee whose salary and health-related benefits, if any  
23 health-related benefits are provided to the employee, are budgeted in the district general fund but are paid from  
24 state fiscal stabilization funds received pursuant the American Recovery and Reinvestment Act of 2009, Public  
25 Law 111-5.

26 (b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative  
27 shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance  
28 systems from the funding source that pays the employee's salary.

29 (3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall  
30 include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the

1 final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems  
2 in accordance with the financial administration provisions of this title.

3 (4) When the final retirement fund budget has been adopted, the county superintendent shall establish  
4 the levy requirement by:

5 (a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

6 (i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal  
7 year;

8 (ii) oil and natural gas production taxes;

9 (iii) coal gross proceeds taxes under 15-23-703;

10 (iv) any fund balance available for reappropriation as determined by subtracting the amount of the  
11 end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal  
12 year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating  
13 reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must  
14 be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund  
15 budget.

16 (v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school  
17 fiscal year, excluding any guaranteed tax base aid.

18 (b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the  
19 levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final  
20 retirement fund budget.

21 (5) The county superintendent shall:

22 (a) total the net retirement fund levy requirements separately for all elementary school districts, all high  
23 school districts, and all community college districts of the county, including any prorated joint district or special  
24 education cooperative agreement levy requirements; and

25 (b) report each levy requirement to the county commissioners on the fourth Monday of August as the  
26 respective county levy requirements for elementary district, high school district, and community college district  
27 retirement funds.

28 (6) The county commissioners shall fix and set the county levy or district levy in accordance with  
29 20-9-142.

30 (7) The net retirement fund levy requirement for a joint elementary district or a joint high school district

1 must be prorated to each county in which a part of the district is located in the same proportion as the district ANB  
 2 of the joint district is distributed by pupil residence in each county. The county superintendents of the counties  
 3 affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

4 (8) The net retirement fund levy requirement for districts that are members of special education  
 5 cooperative agreements must be prorated to each county in which the district is located in the same proportion  
 6 as the special education cooperative budget is prorated to the member school districts. The county  
 7 superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each  
 8 county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net  
 9 retirement fund levy for each county in the same manner as provided in 20-9-152.

10 (9) The county superintendent shall calculate the number of mills to be levied on the taxable property  
 11 in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection  
 12 (5)(a) by the sum of:

13 (a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified  
 14 by the superintendent of public instruction; and

15 (b) the taxable valuation of the district divided by 1,000.

16 (10) The levy for a community college district may be applied only to property within the district.

17 (11) The county superintendent of each county shall submit a report of the revenue amounts used to  
 18 establish the levy requirements for county school funds supporting elementary and high school district retirement  
 19 obligations to the superintendent of public instruction not later than the second Monday in September. The report  
 20 must be completed on forms supplied by the superintendent of public instruction."  
 21

22 **NEW SECTION. Section 26. Appropriation.** There is appropriated from the general fund to the  
 23 department of administration for the biennium beginning July 1, 2011, \$250,000. The only purpose of the  
 24 appropriation is to pay for the administrative expenses of the department, community college districts, and local  
 25 governments, including school districts, in implementing [this act].  
 26

27 **NEW SECTION. Section 27. Department to seek commissioner's ruling or opinion -- certification**  
 28 **that plan is effective.** (1) The department of administration shall, as soon as possible, request in writing a ruling  
 29 or determination from the commissioner of the internal revenue service as to whether the annuity benefit program  
 30 established pursuant to [this act] is a qualified plan pursuant to section 401(a) of the Internal Revenue Code.

1 [This act] becomes effective on July 1, 2012, upon certification as provided in subsection (2).

2 (2) The department shall certify to the governor and the secretary of state the date on which the benefit  
3 annuity program established pursuant to [this act] receives a favorable rule or determination from the internal  
4 revenue service. The department shall provide a copy of the certification to the code commissioner.

5

6 **NEW SECTION. Section 28. Codification instruction.** [Sections 1 through 10] are intended to be  
7 codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [sections 1  
8 through 10].

9

10 **NEW SECTION. Section 29. Saving clause.** [This act] does not affect rights and duties that matured,  
11 penalties that were incurred, or proceedings that were begun before [the applicability date of this act].

12

13 **NEW SECTION. Section 30. Effective dates -- contingent voidness.** (1) Except as provided in  
14 subsections (2) and (3):

15 (a) if certification is received as provided in [section 27] prior to July 1, 2012, [this act] is effective July  
16 1, 2012; and

17 (b) if certification is not received by July 1, 2012, [this act], except for the appropriation contained in  
18 [section 26], is void.

19 (2) [Section 27] and this section are effective on passage and approval.

20 (3) [Section 26] is effective July 1, 2011.

21

22 **NEW SECTION. Section 31. Applicability.** [This act] applies to individuals hired on or after July 1,  
23 2012.

24

- END -