

SENATE BILL NO. 328

INTRODUCED BY D. LEWIS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING NEW HIRES INTO THE PUBLIC EMPLOYEES'
5 RETIREMENT SYSTEM TO BE MEMBERS OF THE DEFINED CONTRIBUTION PLAN; ALLOWING CERTAIN
6 DEFINED BENEFIT PLAN MEMBERS AN OPTION TO SWITCH TO THE DEFINED CONTRIBUTION PLAN;
7 REVISING VESTING PROVISIONS FOR DEFINED CONTRIBUTION PLAN MEMBERS; REQUIRING THE
8 GOVERNOR TO INCLUDE IN THE EXECUTIVE BUDGET THE FUNDING NECESSARY TO AMORTIZE THE
9 UNFUNDED LIABILITY OF THE DEFINED BENEFIT PLAN; REVISING THE ALLOCATION OF THE
10 EMPLOYER CONTRIBUTION FOR MEMBERS OF THE DEFINED CONTRIBUTION PLAN; REQUIRING THE
11 BOARD TO SEEK A RULING OF THE INTERNAL REVENUE SERVICE AND MAKING THE ACT CONTINGENT
12 ON A FAVORABLE RULING; AMENDING SECTIONS 17-7-111, 17-7-112, 19-2-303, 19-2-403, 19-2-407,
13 19-2-715, 19-3-108, 19-3-316, 19-3-319, 19-3-401, 19-3-412, 19-3-2101, 19-3-2106, 19-3-2111, 19-3-2112,
14 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2126, 19-3-2141, AND 19-21-214, MCA;
15 REPEALING SECTION 19-3-2121, MCA; AND PROVIDING EFFECTIVE DATES."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

- 18
19 **NEW SECTION. Section 1. Member contributions.** (1) Each member:
20 (a) shall contribute 6.9% of the member's compensation; and
21 (b) may contribute an additional amount of the member's compensation that will not, when combined
22 with the amount required to be contributed under subsection (1)(a), exceed the maximum amount allowed under
23 section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c).
24 (2) The employer's payment of salary or wages less the contribution required in subsection (1) is full and
25 complete discharge and acquittance of all claims and demands for the service rendered by the member during
26 the period covered by the payment, except the employee's claim to the benefits to which the employee may be
27 entitled under the provisions of this chapter.
28 (3) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code, 26 U.S.C. 414(h)(2),
29 shall pick up and pay the contributions that would be payable by the member under subsection (1).
30 (4) The member's contributions picked up by the employer must be designated for all purposes of the

1 plan as the member's contributions, except for the determination of a tax upon a distribution from the plan. The
2 contributions must be allocated as provided in 19-3-2117(1).

3 (5) The member's contributions picked up by the employer must be paid from the same source that is
4 used to pay compensation to the member and must be included in the member's compensation. The employer
5 shall deduct from the member's compensation an amount equal to the amount of the member's contributions
6 picked up by the employer under subsection (1) and remit the total of the contributions to the board.

7
8 **NEW SECTION. Section 2. Election to transfer to defined contribution for certain defined benefit**
9 **members.** (1) (a) On [the effective date of this section], a member of the defined benefit plan who is not yet
10 vested may elect to transfer to the defined contribution plan.

11 (b) A member allowed to make an election pursuant to subsection (1)(a) may make an election even if
12 the member had previously made an election under 19-3-2111, including the default election.

13 (2) Elections made pursuant to this section must be made on a form prescribed by the board and must
14 be made within 12 months of [the effective date of this section].

15 (3) If a member elects to transfer to the defined contribution plan pursuant to subsection (1)(a), the board
16 shall transfer from the defined benefit plan to the member's retirement account an amount calculated as provided
17 in 19-3-2114(2).

18
19 **NEW SECTION. Section 3. Credit of contributions made after member becomes inactive.**
20 Contributions made on the basis of compensation earned by members after they are considered to be inactive
21 members, as provided in 19-3-403(4), must be credited to the employer.

22
23 **Section 4.** Section 17-7-111, MCA, is amended to read:

24 **"17-7-111. Preparation of state budget -- agency program budgets -- form distribution and**
25 **contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state
26 need information that is consistent and accurate. Necessary information includes detailed disbursements by fund
27 type for each agency and program for the appropriate time period, recommendations for creating a balanced
28 budget, and recommended disbursements and estimated receipts by fund type and fund category.

29 (b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall
30 by agreement:

1 (i) establish necessary standards, formats, and other matters necessary to share information between
2 the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget;
3 and

4 (ii) provide for the collection and provision of budgetary and financial information that is in addition to or
5 different from the information otherwise required to be provided pursuant to this section.

6 (2) In the preparation of a state budget, the budget director shall, not later than the date specified in
7 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget
8 estimates by the budget director. These forms must be prescribed by the budget director to procure the
9 information required by subsection (3). The forms must be submitted to the budget director by the date provided
10 in 17-7-112(2), or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5).
11 The budget director may refuse to accept forms that do not comply with the provisions of this section or the
12 instructions given for completing the forms.

13 (3) Subject to subsections (7) and (8), the agency budget request must set forth a balanced financial plan
14 for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

15 (a) a consolidated agency budget summary of funds subject to appropriation, as provided in 17-8-101,
16 for the current base budget expenditures, including statutory appropriations, and for each present law adjustment
17 and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE)
18 and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts,
19 together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted
20 with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

21 (b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the
22 current biennium and estimated for the subsequent biennium;

23 (c) a statement of the agency mission and a statement of goals and objectives for each program of the
24 agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable
25 information to enable the legislature to formulate an appropriations policy regarding the agency and its programs
26 and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals
27 and objectives.

28 (d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE
29 and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

30 (e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements

1 for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement
2 category;

3 (f) for agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general
4 appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the
5 budget director. Each agency plan must include base budget reductions that reflect the required percentage
6 reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations
7 of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff
8 under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund
9 balances to the general fund. The plan must include:

10 (i) a prioritized list of services that would be eliminated or reduced;

11 (ii) for each service included in the prioritized list, the savings that would result from the elimination or
12 reduction; and

13 (iii) the consequences or impacts of the proposed elimination or reduction of each service.

14 (g) a reference for each new information technology proposal stating whether the new proposal is
15 included in the approved agency information technology plan as required in 2-17-523;

16 (h) energy cost saving information as required by 90-4-616; and

17 (i) other information the budget director feels is necessary for the preparation of a budget.

18 (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with
19 17-7-112:

20 (a) detailed recommendations for the state long-range building program. Each recommendation must
21 be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

22 (b) a statewide project budget summary as provided in 2-17-526;

23 (c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with
24 the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this
25 subsection is not an unfair labor practice under 39-31-401.

26 (d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part
27 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and
28 development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under
29 Title 90, chapter 6, part 7;

30 (e) detailed recommendations for the amount and source of funding necessary to amortize the unfunded

1 liabilities of the retirement system provided for in Title 19, chapter 3, within the time period determined by the
2 public employees' retirement board.

3 (5) The board of regents shall submit, with its budget request for each university unit in accordance with
4 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this
5 subsection (5). The report must include the following information for each year of the biennium, contrasted with
6 the same information for the last-completed fiscal year and the fiscal year in progress:

7 (a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

8 (b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding
9 bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding
10 requirements for each bond indenture; and

11 (c) a schedule showing the total funds available from each bond indenture and its associated accounts,
12 with a list of commitments and planned expenditures from the accounts, itemized by revenue source and project
13 for each year of the current and ensuing bienniums.

14 (6) (a) The department of revenue shall make Montana individual income tax information available by
15 removing names, addresses, and social security numbers and substituting in their place a state accounting record
16 identifier number. Except for the purposes of complying with federal law, the department may not alter the data
17 in any other way.

18 (b) The department of revenue shall provide the name and address of a taxpayer on written request of
19 the budget director when the values on the requested return, including estimated payments, are considered
20 necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially
21 affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or
22 payments on the analysis being performed.

23 (7) (a) The department of public health and human services' budget request for the 2013 biennium must
24 identify changes necessary to reduce the 2013 biennium expenditures to the level funded in the general
25 appropriations act. The department may include changes such as reducing administrative costs, developing more
26 cost-efficient methods to deliver services, limiting the number of medicaid services that adults may receive,
27 changing medicaid services included in the Montana medicaid state plan, changing eligibility or level-of-care
28 requirements for medicaid waiver services, limiting or changing services that are fully state-funded, or
29 implementing other initiatives that reduce state funds. Achieving the necessary general fund reduction in the 2013
30 biennium budget request may not include shifting costs to state special revenue funds.

1 (b) The department of public health and human services shall prepare a work plan with goals,
2 milestones, and measures to guide its review of alternatives to identify, evaluate, and select initiatives to reduce
3 ongoing state spending in its 2013 biennium budget submission. The department shall submit the work plan,
4 goals, milestones, and measures to the legislative finance committee at its first meeting after the adjournment
5 of the 2009 legislative session for its review and comment. The department shall provide an update of its budget
6 reduction for review and comment at each legislative finance committee meeting in a format developed with and
7 agreed upon by the committee.

8 (8) Each agency budget request for the 2013 biennium must include the adjustments to present law base
9 specified in 17-7-102(10)(b)."

10

11 **Section 5.** Section 17-7-112, MCA, is amended to read:

12 **"17-7-112. Submission deadlines -- budgeting schedule.** The following is the schedule for the
13 preparation of a state budget for submission to the legislature convening in the following year:

14 (1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to
15 17-7-111(2).

16 (2) (a) Except as provided in subsection (2)(b), by September 1, each agency shall submit the
17 information required under 17-7-111 to the budget director.

18 (b) By September 1, the consolidated legislative branch shall submit a preliminary draft of the information
19 required under 17-7-111 to the budget director. By October 10, the consolidated legislative branch shall submit
20 the information required under 17-7-111 in final form to the budget director.

21 (3) By September 1, the budget director shall submit each state agency's budget request, except the
22 budget request for the consolidated legislative branch, required under 17-7-111(3) to the legislative fiscal analyst.
23 The transfer of budget information must be done on a schedule mutually agreed to by the budget director and
24 the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each
25 office to maintain a reasonable staff workflow.

26 (4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget
27 reflecting the base budget in a format agreed upon by both the office of budget and program planning and the
28 legislative fiscal analyst.

29 (5) By October 30, a budget request must be prepared by the budget director and submitted to the
30 legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The

1 budget request must be based upon the budget director's studies of the operations, plans, and needs of the
2 institution, university unit, or agency.

3 (6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base
4 for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing
5 the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a
6 format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

7 (7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents,
8 in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that
9 reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting
10 entity.

11 (8) By November 15, the proposed pay plan schedule, ~~and~~ the statewide project budget summary, and
12 the amount necessary to fund the unfunded liabilities of the defined benefit plan of the public employees'
13 retirement system required by 17-7-111(4), a preliminary budget that meets the statutory requirements for
14 submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution
15 to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

16 (9) By December 15, the budget director shall submit a preliminary budget to the governor and to the
17 governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all
18 amendments to the preliminary budget.

19 (10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the
20 legislative fiscal analyst and the legislature as provided in 17-7-121."

21
22 **Section 6.** Section 19-2-303, MCA, is amended to read:

23 **"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems
24 subject to this chapter, the following definitions apply:

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

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

29 (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory
30 manner to represent the present value of the benefits to be derived from the additional service to be credited

1 based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary
2 of the member.

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

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

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

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

10 (8) "Annuity" means:

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

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

15 (9) "Benefit" means:

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

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

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

22 (11) "Contingent annuitant" means:

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

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

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

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

30 (14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement

1 systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

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

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

6 (17) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit
7 of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum
8 payments, or benefit from a retirement account upon the death of the member or payment recipient, including
9 annuities derived from the benefits or payments.

10 (18) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the
11 distributee.

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

16 (20) "Distributee" means:

17 (a) a member;

18 (b) a member's surviving spouse;

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

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

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

25 (22) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover
26 distribution:

27 (a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C.
28 408(a);

29 (b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C.
30 408(b);

- 1 (c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);
- 2 (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);
- 3 (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue
- 4 Code, 26 U.S.C. 403(b);
- 5 (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26
- 6 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of
- 7 a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan
- 8 from a plan under this title; or
- 9 (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26
- 10 U.S.C. 408A.
- 11 (23) "Eligible rollover distribution":
- 12 (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the
- 13 distributee, as provided in 19-2-1011;
- 14 (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former
- 15 spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal
- 16 Revenue Code, 26 U.S.C. 414(p).
- 17 (24) "Employee" means a person who is employed by an employer in any capacity and whose salary is
- 18 being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying
- 19 retirement contributions pursuant to 7-11-105.
- 20 (25) "Employer" means a governmental agency participating in a retirement system enumerated in
- 21 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as
- 22 responsible for paying retirement contributions pursuant to 7-11-105.
- 23 (26) "Essential elements of the position" means fundamental job duties. An element may be considered
- 24 essential because of but not limited to the following factors:
- 25 (a) the position exists to perform the element;
- 26 (b) there are a limited number of employees to perform the element; or
- 27 (c) the element is highly specialized.
- 28 (27) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following
- 29 June 30.
- 30 (28) "Inactive member" means a member who terminates service and does not retire or take a refund of

1 the member's accumulated contributions.

2 ~~_____ (29) "Initially hired" means the earliest date on which an individual is first hired into or employed in a~~
 3 ~~covered position, which may not necessarily be an employee's current covered position.~~

4 ~~(29)(30)(29)~~ "Internal Revenue Code" has the meaning provided in 15-30-2101.

5 ~~(30)(31)(30)~~ "Member" means either:

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

8 (b) a person with a retirement account in the defined contribution plan.

9 ~~(31)(32)(31)~~ "Membership service" means the periods of service that are used to determine eligibility for
 10 retirement or other benefits.

11 ~~(32)(33)(32)~~ (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial
 12 cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year
 13 in the future.

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

15 ~~(33)(34)(33)~~ "Normal retirement age" means the age at which a member is eligible to immediately receive
 16 a retirement benefit based on the member's age, length of service, or both, as specified under the member's
 17 retirement system, without disability and without an actuarial or similar reduction in the benefit.

18 ~~(34)(35)(34)~~ "Pension" means benefit payments for life derived from contributions to a retirement plan
 19 made from state- or employer-controlled funds.

20 ~~(35)(36)(35)~~ "Pension trust fund" means a fund established to hold the contributions, income, and assets
 21 of a retirement system or plan in public trust.

22 ~~(36)(37)(36)~~ "Plan choice rate" means the amount of the employer contribution as a percentage of payroll
 23 covered by the defined contribution plan members that is allocated to the public employees' retirement system's
 24 defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially
 25 fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member
 26 selection of the defined contribution plan.

27 ~~(37)(38)(37)~~ "Regular contributions" means contributions required from members under a retirement plan.

28 ~~(38)(39)(38)~~ "Regular interest" means interest at rates set from time to time by the board.

29 ~~(39)(40)(39)~~ "Retirement" or "retired" means the status of a member who has:

30 (a) terminated from service; and

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

2 ~~(40)(41)(40)~~ "Retirement account" means an individual account within the defined contribution retirement
3 plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member
4 of the defined contribution plan or the member's beneficiary.

5 ~~(41)(42)(41)~~ "Retirement benefit" means:

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

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

10 ~~(42)(43)(42)~~ "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan
11 under one of the public employee retirement systems enumerated in 19-2-302.

12 ~~(43)(44)(43)~~ "Retirement system" or "system" means one of the public employee retirement systems
13 enumerated in 19-2-302.

14 ~~(44)(45)(44)~~ "Service" means employment of an employee in a position covered by a retirement system.

15 ~~(45)(46)(45)~~ "Service credit" means the periods of time for which the required contributions have been
16 made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a
17 defined benefit retirement plan.

18 ~~(46)(47)(46)~~ "Service retirement benefit" means the retirement benefit that the member may receive at
19 normal retirement age.

20 ~~(47)(48)(47)~~ "Statutory beneficiary" means the surviving spouse or dependent child or children of a
21 member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who
22 are statutorily designated to receive benefits upon the death of the member.

23 ~~(48)(49)(48)~~ "Supplemental cost" means an element of the total actuarial cost of a defined benefit
24 retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan
25 or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure
26 to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included
27 in the unfunded actuarial liabilities of the retirement plan.

28 ~~(49)(50)(49)~~ "Survivorship benefit" means payments for life to the statutory or designated beneficiary of
29 a deceased member who died while in service under a defined benefit retirement plan.

30 ~~(50)(51)(50)~~ "Termination of employment", "termination from employment", "terminated employment",

1 "terminated from employment", "terminate employment", or "terminates employment" means that:

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

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

6 ~~(51)~~~~(52)~~~~(51)~~ "Termination of service", "termination from service", "terminated from service", "terminated
7 service", "terminating service", or "terminates service" means that:

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

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

11 (c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to
12 which the member was entitled. For the purposes of this subsection ~~(51)~~ ~~(52)~~ ~~(51)~~, compensation does not mean
13 compensation as a result of a legal action, court order, or settlement to which the board was not a party.

14 ~~(52)~~~~(53)~~~~(52)~~ "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit
15 retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that
16 same date.

17 ~~(53)~~~~(54)~~~~(53)~~ "Vested account" means an individual account within a defined contribution plan that is for
18 the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and
19 the income on all contributions in each of the following accounts:

20 (a) the member's contribution account;

21 (b) the ~~vested~~ portion of the employer's contribution ~~account~~ allocated pursuant to 19-21-2117(2)
22 19-3-2117(2); and

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

24 ~~(54)~~~~(55)~~~~(54)~~ "Vested member" or "vested" means:

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

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

29 ~~(55)~~~~(56)~~~~(55)~~ "Written application" or "written election" means a written instrument, prescribed by the board
30 or required by law, properly signed and filed with the board, that contains all required information, including

1 documentation that the board considers necessary.

2 ~~(56)(57)(56)~~ "Written instrument" includes an electronic record containing an electronic signature, as
3 defined in 30-18-102."

4

5 **Section 7.** Section 19-2-403, MCA, is amended to read:

6 **"19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters
7 enumerated in 19-2-302.

8 (2) The board may establish rules that it considers proper for the administration and operation of the
9 retirement systems and enforcement of the chapters under which each retirement system is established.

10 (3) The board shall establish uniform rules that are necessary to determine service credit for fractional
11 years of service.

12 (4) The board shall determine who are employees within the meaning of each retirement system. The
13 board is the sole authority for determining the conditions under which persons may become members of and
14 receive benefits under the retirement systems.

15 (5) The board shall determine and may modify retirement benefits under the retirement systems. Benefits
16 may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the
17 appropriate retirement system, entitled to the benefits.

18 (6) In matters of board discretion under the systems, the board shall treat all persons in similar
19 circumstances in a uniform and nondiscriminatory manner.

20 (7) The board shall maintain records and accounts it determines necessary for the administration of the
21 retirement systems.

22 (8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial
23 rates and rates of regular interest it determines appropriate for the administration of the retirement systems and
24 shall provide to the budget director the information required in 17-7-111(4)(e).

25 (9) The board shall review the sufficiency of benefits paid by the retirement system or plan and
26 recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the
27 defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard
28 of living.

29 (10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings
30 are implemented, the board shall adopt rules governing means of implementation, including the specification of

1 eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party
2 mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement
3 systems or plans administered by the board.

4 (11) In discharging duties, the board, a member of the board, or an authorized representative of the board
5 may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records,
6 and issue subpoenas to compel the attendance of witnesses and the production of books, papers,
7 correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104
8 of the Montana Administrative Procedure Act.

9 (12) The board may by rule or otherwise delegate to the board's executive director or any other staff
10 member any of the powers or duties conferred by law upon the board except as otherwise provided by law and
11 except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (11)
12 or the contested case procedure of the Montana Administrative Procedure Act.

13 (13) The board shall perform other duties and may exercise the powers concerning the defined
14 contribution plan for plan members as provided in chapter 3, part 21, of this title."
15

16 **Section 8.** Section 19-2-407, MCA, is amended to read:

17 **"19-2-407. Reports.** (1) As soon as practical after the close of each fiscal year, the board shall file with
18 the governor and with the legislature pursuant to 5-11-210 a report of its work for that fiscal year. The report must
19 include but is not limited to:

20 (a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the
21 state treasurer and the board of investments;

22 (b) a summary of the most recent information available from the actuary concerning the actuarial
23 valuation of the assets and liabilities of each system or plan; and

24 (c) an analysis of how market performance is affecting actuarial funding of each of the retirement
25 systems or plans.

26 (2) The report required under subsection (1) must also provide information concerning the defined
27 contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates,
28 the total amount of money invested by members, investment performance, administrative costs and fees,
29 ~~determinations on the plan choice rate made pursuant to 19-3-2121,~~ and other information required under
30 applicable governmental accounting standards and as determined by the board."

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Section 9. Section 19-2-715, MCA, is amended to read:

"19-2-715. Purchase of Montana public service. (1) (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 a~~ 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 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 public service,

1 subject to 19-2-403."

2

3 **SECTION 10. SECTION 19-3-108, MCA, IS AMENDED TO READ:**

4 **"19-3-108. Definitions.** Unless the context requires otherwise, as used in this chapter, the following
5 definitions apply:

6 (1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for
7 the member's services, or for time during which the member is excused from work because of a holiday or
8 because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any
9 pretax deductions allowed by state or federal law are made.

10 (b) Compensation does not include:

11 (i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;

12 (ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

13 (iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related
14 services;

15 (iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

16 (v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of
17 employment.

18 (2) "Contracting employer" means any political subdivision or governmental entity that has contracted
19 to come into the system under this chapter.

20 (3) "Defined benefit plan" means the plan within the public employees' retirement system established
21 in 19-3-103 that is not the defined contribution plan.

22 (4) "Employer" means the state of Montana, its university system or any of the colleges, schools,
23 components, or units of the university system for the purposes of this chapter, or any contracting employer.

24 (5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from
25 appropriations of the state of Montana and from contracting employers.

26 (6) (a) "Highest average compensation" means a member's highest average monthly compensation
27 during any 36 consecutive months of membership service, except as otherwise provided in subsection (6)(b) or
28 (6)(c).

29 (b) For a member who has attained 65 years of age but has not served at least 36 months, highest
30 average compensation means total compensation earned divided by the number of months the member has

1 served.

2 (c) For a vested member who does not have 36 consecutive months of membership service, highest
3 average compensation means the highest total compensation earned during any 36 consecutive calendar months
4 divided by 36.

5 (d) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and
6 annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement
7 benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation
8 for a month or months included in the calculation of the highest average compensation. A lump-sum payment may
9 not be added to a single month's compensation.

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

12 ~~(7)~~(8) "System" or "retirement system" means the public employees' retirement system established in
13 19-3-103."
14

15 **Section 11.** Section 19-3-316, MCA, is amended to read:

16 **"19-3-316. Employer contribution rates.** (1) Each employer shall contribute to the system. Except as
17 provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to
18 all of the employer's employees plus any additional contribution under subsection (3), except for those employees
19 properly excluded from membership. Of employer contributions made under this subsection for both defined
20 benefit plan and defined contribution plan members, a portion must be allocated for educational programs as
21 provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated
22 as provided in 19-3-2117(2).

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

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

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

1 ~~_____ (b) The employer contribution required under subsection (3) terminates on July 1 following the board's~~
 2 ~~receipt of the system's actuarial valuation if:~~
 3 ~~_____ (i) the actuarial valuation determines that the period required to amortize the system's unfunded~~
 4 ~~liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation,~~
 5 ~~is less than 25 years; and~~
 6 ~~_____ (ii) terminating the additional employer contribution would not cause the amortization period as of the~~
 7 ~~most recent actuarial valuation to exceed 25 years."~~

8
 9 **Section 12.** Section 19-3-319, MCA, is amended to read:

10 **"19-3-319. State contributions for local government and school district employers.** (1) The state
 11 shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation
 12 paid to all employees of local government entities and school districts ~~on and after July 1, 1997~~, except those
 13 employees properly excluded from membership.

14 (2) ~~(a) Subject to subsection (2)(b), in~~ In addition to the contribution required under subsection (1), the
 15 state shall contribute monthly from the general fund to the pension trust fund ~~a sum equal to the following~~
 16 ~~percentage~~ 0.27% of the compensation paid to all employees of school districts ~~on and after July 1, 2007~~, except
 17 for those employees properly excluded from membership:

18 ~~_____ (i) beginning July 1, 2007, 0.135%; and~~

19 ~~_____ (ii) beginning July 1, 2009, 0.27%.~~

20 ~~_____ (b) The additional contribution under subsection (2)(a) terminates when the additional contribution under~~
 21 ~~19-3-316(3) terminates.~~

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

25
 26 **Section 13.** Section 19-3-401, MCA, is amended to read:

27 **"19-3-401. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as
 28 provided in subsection (6) and as otherwise provided in this chapter, all employees must become members of
 29 the defined benefit plan on the first day of service. Each employer shall file with the board information affecting
 30 their employees' status as members as the board may require. An employee may become a member of the

1 defined contribution plan only as provided in Title 19, chapter 3, part 21, or subsection (6).

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

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

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

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

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

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

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

17 (5) Time during which an employee of a school district or a public institution of higher education is absent
18 from service during official vacation is counted as membership service in determining eligibility for retirement
19 benefits.

20 (6) (a) An employee initially hired on or after [the effective date of this section] becomes a member of
21 the defined contribution plan.

22 (b) Subsection (6)(a) does not affect the rights or responsibilities of a person who is a member, retiree,
23 or beneficiary of the defined benefit plan on [the effective date of this section]."

24

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

26 **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and ~~subsection~~ subsections (2)
27 and (3) of this section, the following employees and elected officials employed or assuming office before [the
28 effective date of this section] in covered positions shall elect either to become active members of the retirement
29 system or to decline this optional membership by filing an irrevocable, written application with the board in the
30 manner prescribed in subsection ~~(3)~~ (4):

- 1 (a) elected officials of the state or local governments, including individuals appointed to fill the unexpired
2 term of elected officials, who:
- 3 (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or
4 (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the
5 defined contribution plan at the time of their election;
- 6 (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered
7 employment with all employers under this chapter in any fiscal year;
- 8 (c) employees directly appointed by the governor;
- 9 (d) employees working 10 months or less for the legislative branch to perform work related to the
10 legislative session;
- 11 (e) the chief administrative officer of any city or county;
- 12 (f) employees of county hospitals or rest homes.
- 13 (2) A member who is elected to a local government position in which the member works less than 960
14 hours in a calendar year may, within 90 days of being elected, decline optional membership with respect to the
15 member's elected position.
- 16 (3) An individual described in subsections (1)(a) through (1)(f) or (2) who is initially hired or initially
17 elected or appointed to office on or after [the effective date of this section] shall within 90 days of being elected
18 or appointed elect either to become an active member of the defined contribution retirement plan provided for in
19 Title 19, chapter 3, part 21, or to decline this optional membership by filing an irrevocable, written application with
20 the board in the manner prescribed in subsection (4).
- 21 ~~(3)(4)~~ (a) The board shall prescribe the form of the written application required pursuant to ~~subsection~~
22 ~~subsections (1) and (3)~~ and provide written application forms to each employer.
- 23 (b) Each employee or elected official in a position covered under ~~subsection~~ subsections (1) and (3) shall
24 obtain the written application form from the employer and complete and return it to the board.
- 25 (c) The written application must be filed with the board:
- 26 (i) for an employee described in subsection (1)(d), within 90 days of the commencement of the
27 employee's employment; and
- 28 (ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within
29 90 days of the commencement of the employee's or elected official's employment.
- 30 (d) The employer shall retain a copy of the employee's or elected official's written application.

1 ~~(4)~~(5) If the employee or elected official fails to file the written application required under ~~subsection~~
 2 subsections (1) and (3), as applicable, with the board within the time allowed in subsection ~~(3)~~ (4), the employee
 3 or elected official waives membership.

4 ~~(5)~~(6) An employee or elected official who declines optional membership may not receive membership
 5 service or service credit for the employment for which membership was declined.

6 ~~(6)~~(7) An employee or elected official who declined optional membership but ~~later~~ before [the effective
 7 date of this section] becomes a member may purchase service credit for the period of time beginning with the
 8 date of employment in which membership was declined to the commencement of membership. Purchase of
 9 service credit pursuant to this subsection must comply with 19-3-505.

10 ~~(7)~~(8) Except as provided in subsection (2), membership in the retirement system is not optional for an
 11 employee or elected official who is already a member. Upon employment in a position for which membership is
 12 optional:

13 (a) a member who was an active member before the employment remains an active member;

14 (b) a member who was an inactive member before the employment becomes an active member; and

15 (c) a member who was a retired member before the employment is subject to part 11 of this chapter.

16 ~~(8)~~(9) (a) An employee who declines membership for a position for which membership is optional may
 17 not later become a member while still employed with the same employer but in a different optional membership
 18 position.

19 (b) An elected official who declines membership for a position for which membership is optional may not
 20 later become a member if reelected to the same optional membership position.

21 (c) If, after a break in service of 30 days or more, an employee who was employed in an optional
 22 membership position is reemployed in the same position or is employed in a different position for which
 23 membership is optional, the employee shall again choose or decline membership.

24 (d) If the break in service is less than 30 days, an employee who declined membership is bound by the
 25 employee's original decision to decline membership.

26 ~~(9)~~(10) An employee accepting a position that requires membership must become a member even if the
 27 employee previously declined membership and did not have a 30-day break in service."
 28

29 **Section 15.** Section 19-3-2101, MCA, is amended to read:

30 **"19-3-2101. Definitions.** Unless the context requires otherwise, as used in this part, the following

1 definitions apply:

2 (1) "Additional contributions" means contributions made by a member of the plan to purchase various
 3 types of optional service credit or contributions deposited in a member's account pursuant to [section 1(1)(b)].

4 (2) "Defined benefit plan" means the defined benefit retirement plan within the retirement system
 5 provided for pursuant to Title 19, chapter 3.

6 ~~(+)(3)~~ "Member" means a person with a retirement account in the defined contribution plan.

7 ~~(2)(4)~~ "Optional retirement program" means the retirement plan established by the board of regents
 8 under Title 19, chapter 21 ~~of this title~~.

9 ~~(3)(5)~~ "Plan" or "defined contribution plan" means the defined contribution retirement plan.

10 (6) "Service credit" means the periods of time for which the required contributions have been made to
 11 the plan."

12

13 **Section 16.** Section 19-3-2106, MCA, is amended to read:

14 **"19-3-2106. Limited contract right.** The statutory provisions governing the defined contribution plan
 15 and the optional retirement program are subject to amendment by the legislature. Employees choosing the
 16 defined contribution plan or the optional retirement program pursuant to this part or who are otherwise members
 17 of this plan do not have a contract right to the specific terms and conditions specified in statute on the date the
 18 employee's choice or membership in the plan becomes effective."

19

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

21 **"19-3-2111. Plan membership -- written election required -- failure to elect -- effect of election. (1)**
 22 Except as otherwise provided in this part, an employee initially hired by a covered employer on or after [the
 23 effective date of this section] must become a member of the defined contribution plan on the first day of service.
 24 Each employer shall file with the board information affecting the status of the employer's employees as members
 25 of the defined contribution plan as the board may require.

26 (2) The provisions of this part do not apply to and do not affect the rights, privileges, or responsibilities
 27 of any person who is a member of any other retirement system or retirement plan covered in this title.

28 ~~(+)(3)~~ Except as otherwise provided in this part:

29 (a) a member who was an inactive member of the defined benefit plan on ~~the effective date of the~~
 30 ~~defined contribution plan~~ [the effective date of this section], who has not previously made an election required

1 by this section including the default election pursuant to subsection (4)(b), and who is rehired into covered
 2 employment after ~~the plan effective date~~ [the effective date of this section] may, within the 12-month period
 3 provided for in subsection ~~(2)(a)~~ (4)(a), elect to transfer to and become a member of the defined contribution plan
 4 regardless of whether the member remains active, becomes inactive, or terminates employment and plan
 5 membership within the 12-month period;

6 (b) a ~~member person~~ who is initially hired into covered employment ~~on or after the effective date of the~~
 7 ~~defined contribution plan~~ before [the effective date of this section] may, within the 12-month period provided for
 8 in subsection ~~(2)(a)~~ (4)(a), elect to become a member of the defined contribution plan regardless of whether the
 9 member remains active, becomes inactive, or terminates employment and plan membership within the 12-month
 10 period.

11 ~~(2)(4)~~ (a) Elections made pursuant to this section must be made on a form prescribed by the board and
 12 must be made within 12 months from the month that the employer properly reports the new or rehired member
 13 to the board.

14 (b) A member ~~failing~~ hired before [the effective date of this section] who ~~fails~~ to make an election
 15 prescribed by this section remains a member of the defined benefit plan.

16 (c) An election under this section, including the default election pursuant to subsection ~~(2)(b)~~ (4)(b), is
 17 a one-time irrevocable election. Subject to 19-3-2113, this subsection ~~(2)(c)~~ (4)(c) does not prohibit a new election
 18 after a member has terminated membership in either plan and returned to covered employment unless the
 19 member returns to covered employment on or after [the effective date of this section].

20 ~~(3)(5)~~ A member in either the defined benefit plan or the defined contribution plan who becomes an
 21 inactive member after an election under this section and who returns to active membership remains in the plan
 22 previously elected.

23 ~~(4)(6)~~ A ~~system~~ member may not simultaneously be a member of the defined benefit plan and the
 24 defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan.
 25 A period of service may not be credited in more than one retirement plan ~~within the system~~ under Title 19, chapter
 26 3.

27 ~~(5)(7)~~ The provisions of this part do not prohibit the board from adopting rules to allow an employee hired
 28 before [the effective date of this section] to elect the defined contribution plan from the first day of covered
 29 employment.

30 ~~(6)(8)~~ A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907

1 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution
2 plan unless the order is modified to apply under the defined contribution plan.

3 ~~(7)(9)~~ (a) A member of the defined benefit plan who is purchasing service credit through installment
4 payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer
5 membership to the defined contribution plan unless the member first completes or terminates the contract for
6 purchase of service credit.

7 (b) A member who files an election to transfer membership may make a lump-sum payment for up to
8 the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of
9 section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to
10 19-2-708, must be made with after-tax dollars.

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

15

16 **Section 18.** Section 19-3-2112, MCA, is amended to read:

17 **"19-3-2112. Plan choices for members employed by university system -- amount available to**
18 **transfer -- effect on rights.** (1) If a member who is employed by the Montana university system is eligible to
19 make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing
20 to transfer to the defined contribution plan, elect to transfer membership to the university system's optional
21 retirement program provided for under Title 19, chapter 21 ~~of this title~~.

22 (2) Except as otherwise provided in this part, an election to transfer membership to the optional
23 retirement program must be made in accordance with the following provisions:

24 (a) (i) A member employed by the university system who is an active member of the defined benefit plan
25 ~~on the effective date of the defined contribution plan~~ [the effective date of this section] and who has not yet made
26 the election required by this section, including the default election pursuant to subsection (2)(c), may, within the
27 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the optional
28 retirement program regardless of whether the member remains active, becomes inactive, or terminates
29 employment and plan membership within the 12-month period.

30 (ii) A member who was an inactive member of the defined benefit plan on ~~the effective date of the defined~~

1 ~~contribution plan~~ [the effective date of this section], who has not yet made the election required by this section
2 including the default election pursuant to subsection (2)(c), and who is hired or rehired into covered employment
3 with the university system after ~~that date~~ [the effective date of this section] may, within the 12-month period
4 provided for in subsection (2)(b), elect to transfer to and become a member of the optional retirement program
5 regardless of whether the member remains active, becomes inactive, or terminates employment and plan
6 membership within the 12-month period.

7 (iii) A member who is initially hired into covered employment with the university system on or after the
8 effective date of the defined contribution plan and before [the effective date of this section] and who has not
9 previously made an election required under this section, including the default election pursuant to subsection
10 (2)(c), may, within the 12-month period provided for in subsection (2)(b), elect to become a member of the
11 optional retirement program regardless of whether the member remains active, becomes inactive, or terminates
12 employment and plan membership within the 12-month period.

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

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

18 (d) An election under this section, including the default election pursuant to subsection (2)(c), is a
19 one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after
20 an employee has terminated membership in the optional retirement program and returned to employment in a
21 position covered under the system before [the effective date of this section].

22 (e) A member in either the defined benefit plan or the optional retirement program who becomes inactive
23 after an election under this section and who returns to active membership remains in the plan previously elected.

24 (f) Except as provided in subsection (2)(g), a university employee in a position covered under the system
25 may not simultaneously be a member of more than one retirement plan under chapters 3 and 21 of this title, but
26 must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program
27 as provided by applicable provisions of this title. The same period of service may not be credited in more than
28 one retirement system or plan.

29 (g) A university system employee who is or has been a member of the optional retirement program
30 before [the effective date of this section] and returns to or accepts covered employment other than with the

1 university system may make an election pursuant to 19-3-2111. That election is valid only for covered
2 employment other than with the university system.

3 (h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee
4 to elect the optional retirement program from the first day of covered employment.

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

8 (j) (i) A member of the defined benefit plan who is purchasing service credit through installment
9 payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer
10 membership to the optional retirement program unless the member completes or terminates the contract for
11 purchase of service credit.

12 (ii) A member who files an election to transfer membership may make a lump-sum payment for up to the
13 balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section
14 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must
15 be made with after-tax dollars.

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

20 (3) For an employee electing to transfer membership to the optional retirement program, the board shall
21 transfer to the optional retirement program the amount that the employee would have been able to transfer to the
22 defined contribution plan under 19-3-2114.

23 (4) An election to become a member of the optional retirement program pursuant to this section is a
24 waiver of all rights and benefits under the public employees' retirement system."
25

26 **Section 19.** Section 19-3-2113, MCA, is amended to read:

27 **"19-3-2113. Reinstatement of plan membership -- purchase of prior service credit in defined**
28 **benefit plan.** (1) (a) A member who became a member prior to [the effective date of this section] and who
29 terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement
30 program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment

1 in less than 24 months is a member of the plan that the member last selected and is not eligible for a new plan
2 choice election.

3 (b) A member who became a member prior to [the effective date of this section] and terminated
4 membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after
5 making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months
6 or more;

7 (i) but before [the effective date of this section] is eligible to make a plan choice election as though
8 initially hired as provided for in 19-3-2111~~(1)(b)~~ (3)(b).

9 (ii) but on or after [the effective date of this section] must become a member of the defined contribution
10 plan unless the member is eligible to elect membership to the optional retirement program as provided in
11 19-3-2112.

12 (2) (a) An employee who returns to covered employment after terminating membership in the defined
13 benefit plan, who is eligible to make a plan choice pursuant to subsection (1)(b)(i), and who elects to join the
14 defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may reinstate prior membership service and service
15 credit as provided in 19-2-603.

16 (b) An employee who became a member prior to [the effective date of this section] and who returns to
17 covered employment after terminating membership in the defined contribution plan or the optional retirement
18 program, who is eligible to make a plan choice pursuant to subsection (1)(b)(i), and who elects to join the defined
19 benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by
20 paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined
21 benefit plan. The member may not purchase membership service and service credit under this section in excess
22 of the member's length of service in the defined contribution plan or the optional retirement program."
23

24 **Section 20.** Section 19-3-2114, MCA, is amended to read:

25 **"19-3-2114. Amount available to transfer.** (1) (a) For an employee who was an active member of the
26 system on the day before the effective date of the defined contribution plan but before [the effective date of this
27 section] and who elects to transfer to the plan:

28 (i) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan
29 to the member's retirement account the employee's contributions and the percentage of the employer's
30 contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred

1 employee and employer contributions from the month that the contributions were received; and
 2 (ii) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan
 3 to the member's retirement account an amount equal to the amount that would have been allocated to the
 4 member's account pursuant to 19-3-2117, plus 8% compounded annual interest from the month that the
 5 contributions were received.

6 (b) Based on the contribution amount historically available to pay unfunded liabilities in the defined
 7 benefit plan and the transferring member's years of membership service, the percentage of the employer
 8 contributions that may be transferred are as follows:

9 Years of membership service	10 Percentage of employer contributions available to transfer
11 Less than 5 years	65.53%
12 5 to 9 years	58.59%
13 10 to 14 years	55.26%
14 15 to 19 years	55.42%
15 20 or more years	57.53%

16 (2) For an employee hired on or after the effective date of the defined contribution plan who elects to
 17 become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement
 18 account an amount equal to the amount that would have been allocated to the member's account pursuant to
 19 19-3-2117 had the employee become a plan member on the employee's hire date, plus 8% compounded annual
 20 interest from the month that the contributions were received.

21 (3) For an employee who was an inactive member of the defined benefit plan on ~~the date that the defined~~
 22 ~~contribution plan became effective~~ [the effective date of this section], who has not made an election pursuant to
 23 19-3-2111 or 19-3-2112, including a default election, and who after that date became an active member and
 24 elected to transfer to the defined contribution plan:

25 (a) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan
 26 to the member's retirement account the employee's contributions and the percentage of the employer's
 27 contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred
 28 employee and employer contributions from the month that the contributions were received; and

29 (b) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan
 30 to the member's retirement account an amount equal to the amount that would have been allocated to the

1 member's account pursuant to 19-3-2117, plus 8% compounded annual interest from the month that the
 2 contributions were received."

3

4 **Section 21.** Section 19-3-2115, MCA, is amended to read:

5 **"19-3-2115. Transfers or rollovers into plan -- service transfers -- membership credit for purposes**

6 **of vesting.** (1) (a) Except as provided in subsection (2), the board shall accept the rollover of contributions and
 7 the income on those contributions from another eligible retirement plan to the member's ~~vested~~ account as
 8 allowed under applicable federal law.

9 (b) To transfer service credit from another retirement system in this title, an employee must be a member
 10 of the defined benefit plan. The member must receive membership service and service credit for the service the
 11 member transfers. The transferring member may, within 12 months after joining the defined benefit plan, elect
 12 to become a member of the defined contribution plan. ~~The transferred service credit may be used for purposes~~
 13 ~~of vesting in the defined contribution plan pursuant to 19-3-2116.~~

14 (2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan
 15 only to the extent permitted by the Internal Revenue Code."

16

17 **Section 22.** Section 19-3-2116, MCA, is amended to read:

18 **"19-3-2116. Vesting -- mandatory termination of membership -- forfeitures.** (1) A member's

19 contribution account includes the member's and employer's contributions and the income on those contributions
 20 and is vested from the date that the employee becomes a member of the plan.

21 ~~(2) A member's employer contribution account includes the employer's contributions and the income on~~
 22 ~~those contributions and is vested only when the member has a total of 5 years of membership service under the~~
 23 ~~system.~~

24 ~~(3)(2)~~ A member's account for other contributions ~~(3)(2)~~ includes the member's rollovers of contributions made
 25 pursuant to 19-3-2115 and income on those contributions and is vested from the date that the contribution is
 26 credited to the account.

27 ~~(4)(3)~~ A member who terminates service ~~after becoming a vested member~~ may terminate plan
 28 membership as provided in 19-3-2123.

29 ~~(5) A member who terminates service before becoming a vested member shall terminate plan~~
 30 ~~membership as provided in 19-3-2123 and subject to 19-3-2126.~~

1 ~~(6) If the member's employer contribution account is not vested upon termination of plan membership,~~
 2 ~~as provided in 19-3-2123, the employer contributions and income are forfeited and must be allocated as provided~~
 3 ~~in 19-3-2117.~~

4 (4) A member of the defined contribution plan who was initially hired before [the effective date of this
 5 section] is immediately vested in the member's employer contribution account."

6

7 **Section 23.** Section 19-3-2117, MCA, is amended to read:

8 **"19-3-2117. Allocation of contributions and forfeitures.** (1) The member contributions made under
 9 19-3-315 or [section 1] and additional contributions paid by the member for the purchase of service must be
 10 allocated to the plan member's retirement account.

11 (2) ~~Subject to adjustment by the board as provided in 19-3-2121, of the~~ Of the employer contributions
 12 received under 19-3-316, ~~received:~~

13 (a) an amount equal to:

14 (i)(a) ~~4.19%~~ 6.56% of compensation must be allocated to the member's retirement account;

15 (ii) ~~2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;~~

16 (iii)(b) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b);

17 and

18 (iv)(c) 0.3% of compensation must be allocated to the long-term disability plan trust fund established
 19 pursuant to 19-3-2141; and

20 (b)(d) ~~on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing~~
 21 ~~until the additional employer contributions terminate pursuant to 19-3-316; 0.27% of compensation must be~~
 22 ~~allocated in the following order:~~

23 (i) ~~to the administrative account used by the board to meet the expenses of the plan's startup loan, until~~
 24 ~~paid in full;~~

25 (ii)(i) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

26 (iii)(ii) to the long-term disability plan trust fund to provide disability benefits to eligible members.

27 (3) ~~Forfeitures of employer contributions and investment income on the employer contributions may not~~
 28 ~~be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to~~
 29 ~~meet the plan's administrative expenses, including startup expenses."~~

30

1 **Section 24.** Section 19-3-2126, MCA, is amended to read:

2 **"19-3-2126. Refunds -- minimum account balance -- adjustment by rule.** (1) Before termination of
3 service, a member may not receive a refund of any portion of the member's ~~vested~~ account balance.

4 (2) Except as provided in 19-3-2142, a member who terminates service and whose ~~vested~~ account
5 balance is less than \$200 must be paid the ~~vested~~ account balance in a lump sum. ~~If the member's employer~~
6 ~~contribution account is not vested, the employer contributions and income are forfeited and must be allocated~~
7 ~~as provided in 19-3-2117.~~ The payment must be made as soon as administratively feasible without a written
8 application from the member.

9 (3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a),
10 a member who terminates service and whose ~~vested~~ account balance is between \$200 and \$1,000 must be paid
11 the ~~vested~~ account balance in a lump sum. The payment must be made as soon as administratively feasible. ~~If~~
12 ~~the member's employer contribution account is not vested, the employer contributions and income are forfeited~~
13 ~~and must be allocated as provided in 19-3-2117.~~

14 (4) (a) Except as provided in 19-3-2142, upon the written application of a member terminating service
15 whose ~~vested~~ account balance is \$200 or more, the board shall make a direct rollover distribution pursuant to
16 section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31), of the eligible rollover distribution portion
17 of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating,
18 on forms provided by the board, an eligible retirement plan that allows the rollover under applicable federal law.

19 (b) The direct rollover distribution must be paid directly to an eligible retirement plan allowed under
20 applicable federal law that, effective January 1, 2008, includes a Roth IRA provided for in section 408A of the
21 Internal Revenue Code, 26 U.S.C. 408A.

22 (5) A member who terminates service with an account balance greater than \$1,000, ~~whether vested or~~
23 ~~not~~, may remain in the plan.

24 (6) The board may by rule adjust the minimum account balance provided in this section as necessary
25 to maintain reasonable administrative costs and to account for inflation and in accordance with the requirements
26 of section 401(a)(31)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(31)(B), and applicable regulations."
27

28 **Section 25.** Section 19-3-2141, MCA, is amended to read:

29 **"19-3-2141. Long-term disability plan -- benefit amount -- eligibility -- administration and**
30 **rulemaking.** (1) (a) Except as provided in subsection (1)(b), a disabled member eligible under the provisions of

1 this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average
2 compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service
3 credit purchased under 19-3-513.

4 (b) An eligible member with at least 25 years of membership service is entitled to a disability benefit
5 equal to one-fiftieth of the member's highest average compensation, as defined in 19-3-108, multiplied by the
6 member's years of service credit, including any service credit purchased under 19-3-513.

7 (2) Payment of the disability benefit provided in this section is subject to the following:

8 ~~(a) the member must be vested in the plan as provided in 19-3-2116;~~

9 (A) THE MEMBER MUST HAVE AT LEAST 5 YEARS OF MEMBERSHIP SERVICE UNDER THE SYSTEM;

10 ~~(b)(a)(B)~~ if the member's disability occurred when the member was 60 years of age or less, the benefit
11 may be paid only until the member reaches 65 years of age;

12 ~~(c)(b)(C)~~ if the member's disability occurred after the member reached 60 years of age, the benefit may
13 be paid for no more than 5 years; and

14 ~~(d)(c)(D)~~ the member shall satisfy the other applicable requirements of this section and the board's rules
15 adopted to implement this section.

16 (3) Application for a disability benefit must be made in accordance with 19-3-1005.

17 (4) The board shall make determinations on disability claims and conduct medical reviews in a manner
18 consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination
19 as provided in rules adopted by the board.

20 (5) If a member receiving a disability benefit under this section dies, the disability benefit payments cease
21 and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125.

22 (6) The board shall establish a long-term disability plan trust fund from which disability benefit costs
23 pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined
24 benefit plan trust fund.

25 (7) The board shall:

26 (a) perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of
27 this section; and

28 (b) should the portion of the employer contributions received pursuant to 19-3-2117(2)(d) be insufficient
29 to fund the long-term disability plan trust fund, recommend to the legislature changes to the allocation of the
30 employer contributions."

1
2 **Section 26.** Section 19-21-214, MCA, is amended to read:
3 **"19-21-214. Contributions and allocations for employees in positions covered under the public**
4 **employees' retirement system.** (1) The contribution rates for employees in positions covered under the public
5 employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

6 (a) the member's contribution rate must be the rate provided in 19-3-315 or [section 1]; and

7 (b) the employer's contribution rate must be the rate provided in 19-3-316.

8 (2) ~~Subject to subsection (3), of~~ Of the employer's contribution: ~~;~~

9 ~~_____~~ (a) an amount equal to:

10 ~~(i)~~ (a) ~~4.49%~~ 6.86% of compensation must be allocated to the participant's program account;

11 ~~(ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees'~~
12 ~~retirement system as the plan choice rate; and~~

13 ~~(iii)~~ (b) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b); and

14 ~~(b)(c) on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing~~
15 ~~until the additional employer contributions terminate pursuant to 19-3-316; 0.27% of compensation must be~~
16 ~~allocated in the following order:~~

17 ~~_____~~ (i) to the administrative account used by the public employees' retirement board to meet the expenses
18 ~~of the defined contribution plan's startup loan, until paid in full; and~~

19 ~~_____~~ (ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability.

20 ~~(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement~~
21 ~~board, but only as described in and in a manner consistent with the express provisions of 19-3-2121."~~

22
23 NEW SECTION. **Section 27. Repealer.** The following section of the Montana Code Annotated is
24 repealed:

25 19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.

26
27 NEW SECTION. **Section 28. Board to seek commissioner's ruling or opinion -- certification that**
28 **plan is effective.** (1) The public employees' retirement board shall, as soon as possible, request in writing a
29 ruling or determination from the commissioner of the internal revenue service as to whether the defined
30 contribution retirement plan of the public employees' retirement system as revised pursuant to [this act] affects

1 the status of the retirement system as a "qualified plan" pursuant to section 401(a) of the Internal Revenue Code.

2 (2) The board shall certify to the governor and the secretary of state the date on which the defined
3 contribution retirement plan as revised pursuant to [this act] receives a favorable rule or determination from the
4 internal revenue service. The board shall provide a copy of the certification to the code commissioner.

5
6 **NEW SECTION. Section 29. Codification instruction.** [Sections 1 through 3] are intended to be
7 codified as an integral part of Title 19, chapter 3, part 21, and the provisions of Title 19, chapter 3, part 21, apply
8 to [sections 1 through 3].

9
10 **NEW SECTION. Section 30. Saving clause.** [This act] does not affect rights and duties that matured,
11 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

12
13 **NEW SECTION. Section 31. Effective dates -- contingency.** (1) Except as provided in subsection (2),
14 [this act] is effective on passage and approval.

15 (2) [Sections 1 through ~~26~~ 27] are effective upon certification pursuant to [section ~~27~~ 28] and notification
16 of the code commissioner pursuant to [section ~~27~~ 28].

17 - END -