

HOUSE BILL NO. 213

INTRODUCED BY D. GALLIK

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING RETIREMENT LAWS; GENERALLY REVISING THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDEN AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; GENERALLY REVISING THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CLARIFYING TERMINOLOGY RELATED TO SERVICE CREDIT; CLARIFYING PROVISIONS REGARDING THE PURCHASE OF SERVICE CREDIT; REVISING THE PURCHASE OF SERVICE CREDIT FOR RESERVE MILITARY SERVICE; CLARIFYING DEFINITIONS WITH RESPECT TO COMPENSATION, HIGHEST AVERAGE COMPENSATION, AND FINAL AVERAGE COMPENSATION; REVISING DISABILITY PROVISIONS; CLARIFYING SURVIVORSHIP PAYMENT PROVISIONS; REVISING PROVISIONS RELATED TO COURT SETTLEMENTS CONCERNING PAYMENT OF RETIREMENT BENEFITS; REVISING DEFINITIONS IN THE DEFERRED RETIREMENT OPTION PLAN WITHIN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 7-33-2313, 19-2-303, 19-2-403, 19-2-506, 19-2-603, 19-2-702, 19-2-704, 19-2-706, 19-2-708, 19-2-709, 19-2-801, 19-2-802, 19-2-907, 19-2-908, 19-2-909, 19-2-1010, 19-3-108, 19-3-401, 19-3-403, 19-3-412, 19-3-503, 19-3-504, 19-3-505, 19-3-510, 19-3-511, 19-3-512, 19-3-513, 19-3-514, 19-3-521, 19-3-904, 19-3-906, 19-3-908, 19-3-1002, 19-3-1008, 19-3-1015, 19-3-1106, 19-3-1201, 19-3-1202, 19-3-1205, 19-3-1210, 19-3-1501, 19-3-2103, 19-3-2111, 19-3-2112, 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2126, 19-3-2133, 19-3-2141, 19-5-101, 19-5-301, 19-5-409, 19-5-501, 19-5-502, 19-5-701, 19-6-101, 19-6-401, 19-6-502, 19-6-503, 19-6-601, 19-6-709, 19-6-801, 19-6-803, 19-6-804, 19-6-805, 19-7-101, 19-7-301, 19-7-312, 19-7-502, 19-7-601, 19-7-801, 19-7-803, 19-7-804, 19-7-805, 19-7-1001, 19-8-101, 19-8-301, 19-8-302, 19-8-308, 19-8-604, 19-8-701, 19-8-801, 19-8-901, 19-8-904, 19-8-905, 19-8-906, 19-9-104, 19-9-301, 19-9-403, 19-9-405, 19-9-406, 19-9-410, 19-9-411, 19-9-903, 19-9-1202, 19-9-1204, 19-9-1205, 19-9-1206, 19-9-1207, 19-9-1208, 19-13-104, 19-13-301, 19-13-403, 19-13-405, 19-13-406, 19-13-701, 19-13-704, 19-13-803, 19-13-1007, 19-17-108, 19-17-402, 19-17-403, 19-17-405, 19-50-102, AND 25-13-608, MCA; AND REPEALING SECTIONS 19-3-509, 19-3-1604, 19-6-802, 19-7-802, 19-8-902, 19-9-405, AND 19-13-404, MCA."

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

NEW SECTION. Section 1. Purchase of Montana public service. (1) (a) A 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 to the extent that the member either has received or is eligible to receive a refund of accumulated contributions. 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)(b).

(b) Upon receiving the member's payment under subsection (1)(a), 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.

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

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

Section 2. Section 7-33-2313, MCA, is amended to read:

"7-33-2313. Powers and duties of chief -- request for assistance -- definitions. (1) The chief of every fire department shall inquire into the cause of every fire occurring in the town in which the chief serves as the chief and ~~must~~ shall keep a record of every fire. The chief ~~must~~ shall aid in the enforcement of all fire ordinances, examine buildings in the process of erection, report violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions for the violation of those ordinances, and perform other duties as may be imposed upon the chief by proper authority. The chief's compensation, if any, must be fixed and paid by the city or town authorities. The chief ~~must~~ shall attend all fires, with the chief's badge of office conspicuously displayed. The chief shall prevent injury to, take charge of, and

preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping it. The amount of the expenses, when not agreed to, must be fixed by a justice of the peace.

(2) The chief shall devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of the chief's department not less than 30 hours of instruction ~~per each year~~ in matters pertaining to firefighting, ~~and the~~ The chief shall supervise the operation of the training plan or program and maintain training records for each current and former firefighter for use by the board.

(3) If the county commissioners, trustees of a fire district, or governing body of a fire service area have not concluded a mutual aid agreement to protect an unincorporated town or village against natural incidents, emergencies, or disasters or incidents, emergencies, or disasters caused by persons, the chief may request assistance pursuant to 10-3-209.

(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ~~ascribed to the term~~ provided in 10-3-103."

Section 3. Section 19-2-303, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

(8) "Annuity" means:

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

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

(9) "Benefit" means:

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

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

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

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

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

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

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

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

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

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

~~(18)~~(17) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

~~(19)~~(18) "Disability" or "disabled" means a total inability of the member to perform the member's duties

by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

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

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

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

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

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

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

(24) "Inactive member" means a member who is not an active or retired member.

(25) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(26) "Member" means either:

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

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

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

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

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

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

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

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

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

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

(35) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

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

(37) "Retirement benefit" means:

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

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

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

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

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

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

benefit retirement plan.

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

~~(41)~~(43) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(42)~~(44) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

~~(43)~~(45) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

~~(44)~~(46) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(45)~~(47) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(46)~~(48) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

- (a) the member's contribution account;_i
- (b) the vested portion of the employer's contribution account;_i and
- (c) the member's account for other contributions.

~~(47)~~(49) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

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

~~(48)~~(50) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary."

Section 4. Section 19-2-403, MCA, is amended to read:

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

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

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

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

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

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

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

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

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

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

eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in ~~an account in the state special revenue fund and must be appropriated to the board~~ the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

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

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

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

Section 5. Section 19-2-506, MCA, is amended to read:

"19-2-506. Payment of contributions by employers -- accompanying reports -- penalty. (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.

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

- (a) an action in a court of competent jurisdiction against the employer; or
- (b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer. The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any

other data concerning employees that the board needs to administer the specific retirement system or plan. The board shall establish the method of reporting, the reporting period, and the frequency of reports to meet the demands of the relevant retirement system or plan. The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.

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

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

Section 6. Section 19-2-603, MCA, is amended to read:

"19-2-603. Reinstatement after withdrawal of contributions. (1) Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes a member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without ~~credit for any~~ previous membership service or service credit. The person may reinstate that membership service or service credit by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the membership service and service credits ~~credits~~ credit previously canceled must be reinstated.

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in ~~this section~~ 19-2-801."

Section 7. Section 19-2-702, MCA, is amended to read:

"19-2-702. Membership service. A member who is not retired must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The membership service must be used to determine:

- (1) whether a member is vested;
- (2) when the member is eligible for ~~early or normal~~ service retirement, early retirement, or disability retirement; or

(3) the eligibility of beneficiaries for survivorship benefits."

Section 8. Section 19-2-704, MCA, is amended to read:

"19-2-704. Purchasing service credits allowed -- payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition to the mandatory employee contributions required by the member's retirement system to purchase service credits as provided by the statutes governing the retirement system.

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

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

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

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

- (a) must be signed by the member and the member's employer;
- (b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;
- (c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;
- (d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and
- (e) must specify that the contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

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

- (a) An employer shall pick up the member's elective contributions made pursuant to a payroll deduction

authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

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

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

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

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

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction, except when a member with a contract to purchase existing service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j).

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

Section 9. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service credit for member involuntarily terminated from membership

service. (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a legislator, because of term limits terminating the service of the legislator in either one of the houses of the legislature;

(c) the employee is eligible for a ~~normal~~ service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service credit purchased under this section is the total actuarial cost of purchasing the service credit based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, or 19-8-904. The employer-paid portion ~~applied toward the service purchase~~ must be calculated using the formula $A \times B \times C$ when:

(a) A is equal to a maximum of 3 additional years of service credit that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service credit purchased by the terminated employee.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service credit to be purchased and the ~~amount contributed by~~ contribution required from the employer under subsection (3). A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in

installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) (a) A member who has received additional service credit under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system forfeits the additional service credit. The employer's contribution to purchase that member's additional service credit, minus any retirement benefits already paid, must be credited to the employer.

(b) As used in this subsection (6)(a), the ~~same jurisdiction~~ term "same jurisdiction" means all agencies of the state, including the university system."

Section 10. Section 19-2-708, MCA, is amended to read:

"19-2-708. Rollover of contributions. (1) A member who elects to and is eligible to purchase service credit from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, file a written application with the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service credit that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code."

Section 11. Section 19-2-709, MCA, is amended to read:

"19-2-709. Transfer of service and contributions from other Montana public employee retirement systems. (1) A member eligible to transfer service credit, pursuant to ~~19-3-509~~, [section 1] and 19-3-511, ~~19-6-802, 19-7-802, 19-8-902, 19-9-405, or 19-13-404~~, into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board."

Section 12. Section 19-2-801, MCA, is amended to read:

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

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

~~(2)~~(3) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient."

Section 13. Section 19-2-802, MCA, is amended to read:

"19-2-802. Effect of no designation or no surviving designated beneficiary. (1) If a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate, as either a designated beneficiary or as a beneficiary by default as provided in this subsection, would not be probated but for the amount due to the estate from the retirement system, all of the amount due to the estate must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother;
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at

the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

Section 14. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees -- family law orders -- rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) ~~Service retirement~~ Retirement benefit payments or refunds may be apportioned by directing payment

of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned as a percentage only if existing benefit payments are apportioned as a percentage. The adjustments must be apportioned as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments ~~from~~ or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system

must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders."

Section 15. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit -- rulemaking. (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated ~~covered~~ service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before terminating ~~covered~~ service, but commencement of the benefits must be as provided in this section.

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

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

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

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

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

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

Section 16. Section 19-2-909, MCA, is amended to read:

"19-2-909. Execution or withholding for support obligation -- rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) ~~Service retirement~~ Retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments ~~from~~ or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders."

Section 17. Section 19-2-1010, MCA, is amended to read:

"19-2-1010. Retaining qualified plan status -- content of plan document -- board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code and with consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the plan to retain its qualified status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules, policies, and plan documents adopted by the board.

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

Section 18. Section 19-3-108, MCA, is amended to read:

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

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

(b) Compensation does not include:

- (i) the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a);
- (ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;
- (iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;
- (iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and
- (v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

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

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

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

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

(6) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, with respect to a member who has attained 65 years of age but has not served at least 36 months, total compensation earned divided by the number of months the member has served. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A

lump-sum payment may not be added to a single month's compensation.

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

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

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

(2) A member of the defined benefit plan with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member of the defined benefit plan with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement plan. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) A member of either the defined benefit plan or the defined contribution plan who returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who terminates one service but remains in another service or subsequently reenters service is an active member.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as membership service in determining eligibility for ~~membership under this chapter~~ retirement benefits."

Section 20. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions from membership. The following persons may not become members of the retirement system:

- (1) inmates of state institutions;
- (2) persons in state institutions principally for the purpose of training but who receive compensation;
- (3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for ~~service employment~~. It is the purpose of this subsection to prevent a person from receiving credit for the same ~~service employment~~ in two retirement systems supported wholly or in part by public funds, except when the service qualifies; and is applied for; and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

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

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

Section 21. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) The following employees in covered employment may become members of the retirement system at their option by filing an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service credit. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service credit under this subsection (2)(b).

(3) If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The employer shall file the statement with the board and retain a copy of the statement. An employee who declines optional membership may not receive membership ~~credit~~ service or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

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

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

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

(6) An employee who declines membership while employed in a position for which membership is

optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more, an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."

Section 22. Section 19-3-503, MCA, is amended to read:

"19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection ~~(2)~~ ~~(1)(b)~~ and subject to 19-3-514, a member with at least 10 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

~~(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(2)(b)~~ A member is not eligible to purchase active military service credit under ~~this section~~ subsection (1)(a) if the member:

~~(a)(i)~~ has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

~~(b)(ii)~~ is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)(iii)~~ is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-3-514, a member with at least 10 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit under this section, the member shall pay the actuarial cost of the

member's active or reserve military service credit based on the system's most recent actuarial valuation."

Section 23. Section 19-3-504, MCA, is amended to read:

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

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to ~~covered~~ service to the date the member contributes for the period of absence.

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

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

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which retirement benefits are received if the member retires during the absence."

Section 24. Section 19-3-505, MCA, is amended to read:

"19-3-505. Purchase of previous employment with employer. (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all

or a portion of the employment for service credit. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase of service credit under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay the amount that the member and the member's employer would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(c).

(c) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees."

Section 25. Section 19-3-510, MCA, is amended to read:

"19-3-510. Employment in United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may purchase the federal employment as service credit in the retirement system under subsection (2) if:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) purchase service credit for the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of highest average compensation, provided that the highest average compensation does not exceed 100% of the member's highest annual compensation earned as a state or local government employee."

Section 26. Section 19-3-511, MCA, is amended to read:

"19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system. (1) Except as provided in subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service credit under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(3) (a) The amount of service credit granted in subsection (1) must be on a month-by-month basis.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514, except as provided in subsection (3)(c).

(c) Active service transferred from the teachers' retirement system or refunded service from the teachers' retirement system that is eligible to be purchased under this section is not subject to service credit limitations.

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) If an active member who ~~also~~ has also service credit in the teachers' retirement system dies before the member purchases this service credit in the public employees' retirement system and if the service ~~credits~~ credit from both systems, when combined, ~~entitle~~ entitles the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to purchase this service credit in the public employees' retirement system, as provided in subsection (2).

(6) If the board determines that a member was erroneously classified and reported to the teachers'

retirement system, the member's accumulated contributions and service credit, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request."

Section 27. Section 19-3-512, MCA, is amended to read:

"19-3-512. Purchase of service credit from other public retirement systems. (1) Subject to 19-3-514, a member with at least 5 years of membership service in the public employees' retirement system may purchase service credit for:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not purchase more than 5 years of service credit under this section. To purchase this service credit, a member shall:

(a) at any time before retirement, file a written application with the board; and

(b) pay the actuarial cost of the service credit in the public employees' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section may not be used to qualify a member to purchase military service under 19-3-503.

(4) Service credit purchased under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If, upon the member's retirement, the member's purchased service credit cannot be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid to purchase the service credit, plus regular interest on that amount."

Section 28. Section 19-3-513, MCA, is amended to read:

"19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least

5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

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

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

Section 29. Section 19-3-514, MCA, is amended to read:

"19-3-514. Service purchase limit -- exception. (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, and 19-3-513.

(2) A member who has purchased service credit under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service credit under 19-3-513 must receive credit for the full months of service credit purchased on or before January 1, 1990."

Section 30. Section 19-3-521, MCA, is amended to read:

"19-3-521. Service credit for legislative members. A member of the legislature of Montana must ~~be credited with~~ receive membership service and service credit for that portion of each year for which the member pays regular contributions."

Section 31. Section 19-3-904, MCA, is amended to read:

"19-3-904. Amount of service retirement benefit. (1) Except as provided in subsection (2), the monthly amount of service retirement benefit payable to a member following ~~service~~ retirement is the greater of subsection (1)(a), ~~or~~ (1)(b), or (2) as follows:

(a) one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit; or

(b) a monthly benefit that is the sum of:

(i) the actuarial equivalent of double the member's regular contributions and regular interest; plus

(ii) the actuarial equivalent of any additional contributions and regular interest.

(2) ~~The~~ For a member with at least 25 years of membership service, the monthly amount of service retirement benefit ~~payable to a member who has at least 25 years of membership service is~~ must be equal to

one-fiftieth of the member's highest average compensation multiplied by the number of years of the member's total service credit instead of the amount calculated under subsection (1)(a)."

Section 32. Section 19-3-906, MCA, is amended to read:

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

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

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

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

(3) The actuarial reduction provided for in this section must be adjusted for any additional service credit purchased under 19-3-513."

Section 33. Section 19-3-908, MCA, is amended to read:

"19-3-908. Retirement incentive program -- window of eligibility. (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service credit that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service credit for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service credit provided in this section.

(3) An active member who is involuntarily terminated because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination, eligible for ~~normal~~ service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service credit, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions."

Section 34. Section 19-3-1002, MCA, is amended to read:

"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service retirement or early retirement but who has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008(1).

(2) An active member ~~age~~ who is 60 years of age or older and who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who

has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3)."

Section 35. Section 19-3-1008, MCA, is amended to read:

"19-3-1008. Benefit for disability. (1) The monthly amount of the disability retirement benefit payable to a member ~~eligible for disability retirement~~ under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's highest average compensation.

(2) Except as provided in subsection (3), the monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to one-fiftieth of the member's highest average compensation multiplied by the member's years of service credit,

including any additional service credit purchased under 19-3-513.

(4) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature."

Section 36. Section 19-3-1015, MCA, is amended to read:

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

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

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

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

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

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

Section 37. Section 19-3-1106, MCA, is amended to read:

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

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

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

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

(5) A retired member 70 1/2 years of age or older who returns to employment covered by the retirement system is not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3)."

Section 38. Section 19-3-1201, MCA, is amended to read:

"19-3-1201. Eligibility for death payments. Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death ~~benefit~~ payment to the designated beneficiary of any member who dies:

- (1) while in service;
- (2) within 6 months after the discontinuance of service but before retirement;
- (3) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months;

or

(4) while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit; or

(5) while an inactive member."

Section 39. Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of lump-sum death payment. (1) The amount of payment to be made to those eligible for death payments is the sum of subsections (1)(a), ~~(2) (1)(b)~~, and ~~(3) (1)(c)~~ as follows:

~~(1)(a)~~ the member's accumulated contributions;

~~(2)(b)~~ an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

~~(3)(c)~~ the accumulated regular interest on the amounts in subsections ~~(1) (1)(a)~~ and ~~(2) (1)(b)~~ to the first day of the month in which the payment is made.

(2) A beneficiary of an inactive member is not eligible to receive the payment described in subsection (1)(b)."

Section 40. Section 19-3-1205, MCA, is amended to read:

"19-3-1205. Amount of survivorship benefit. The survivorship benefit payable to a member's designated beneficiary is the actuarial equivalent of:

(1) the accrued portion of the early retirement benefit pursuant to 19-3-906 that would have been payable to the member commencing at age 50 if the member had not attained age 50 or earned 25 years of membership service ~~credit~~ at the time of death;

(2) if the deceased member had attained age 50 or earned 25 years of membership service ~~credit~~ at the time of death, the early retirement benefit that would have been payable to the member if the member had retired

immediately prior to death; or

(3) if the deceased member had attained age 60 or earned 30 years of membership service ~~credit~~ at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death."

Section 41. Section 19-3-1210, MCA, is amended to read:

"19-3-1210. Death payments to designated beneficiaries of retired members. If a retired member dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary or estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account."

Section 42. Section 19-3-1501, MCA, is amended to read:

"19-3-1501. Optional forms of benefits -- designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to a contingent annuitant as follows:

(a) option 2--a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3--a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4--upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

(5) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has ~~not been granted the~~ no right to receive the optional retirement benefit as part of ~~the dissolution settlement or a family law order, as defined in 19-2-907.~~

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement, designate a different contingent annuitant, or select a different option if:

(i) the contingent annuitant has died, in which case the optional benefit ~~must~~ may revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ has no right to receive the optional retirement benefit as part of ~~the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.~~

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(7) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 43. Section 19-3-2103, MCA, is amended to read:

"19-3-2103. Legislative intent. It is the intent of the legislature that, in implementing and administering the defined contribution plan:

(1) changes to current administrative processes and the impact of those changes on employers be minimized to the extent possible;

(2) the administrative structure for the plan be configured in an economical and efficient manner;

(3) administration and services for the plan be contracted out to the extent possible, but that the board provide for the diligent oversight of the contracts;

(4) reasonable ~~participant~~ member services be provided for and that fees be commensurate with the services;

(5) lines of communication and responsibilities be clearly established so that employers or their personnel and payroll officers do not advise members about plan choices or investment alternatives; and

(6) employers be encouraged to provide paid time for ~~employees~~ members to attend educational programs sponsored by the board pursuant to 19-3-112."

Section 44. Section 19-3-2111, MCA, is amended to read:

"19-3-2111. Plan membership -- written election required -- failure to elect -- effect of election. (1)

Except as otherwise provided in this part:

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

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

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

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board.

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

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

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

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

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

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

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

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

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

Section 45. Section 19-3-2112, MCA, is amended to read:

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

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

(a) (i) A member employed by the university employee system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within 12 months after that date, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period.

(ii) A ~~university employee~~ member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within 12 months after the member's hire or rehire date, elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period.

(iii) ~~An employee~~ A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within 12 months of the member's hire date, elect to become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board.

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

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

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

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

(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

~~(g)~~(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible

employee to elect the optional retirement program from the first day of covered employment.

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

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

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

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

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

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

Section 46. Section 19-3-2113, MCA, is amended to read:

"19-3-2113. Reinstatement of plan membership -- purchase of prior service credit in defined benefit plan. (1) (a) A ~~participant member~~ member who terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months shall become a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A ~~participant member~~ member who terminated membership in ~~either~~ the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The ~~employee member~~ may not purchase membership service and service credit under this section in excess of the ~~employee's member's~~ length of service ~~as a member of~~ in the defined contribution plan or the optional retirement program."

Section 47. Section 19-3-2114, MCA, is amended to read:

"19-3-2114. Amount available to transfer. (1) (a) For an employee who was a system member on the day before the effective date of the defined contribution plan and who elects to transfer to the plan, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions.

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

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

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

Section 48. Section 19-3-2115, MCA, is amended to read:

"19-3-2115. Transfers or rollovers into plan -- service transfers -- membership credit for purposes of vesting. (1) (a) Except as provided in subsection (2), the board shall accept the rollover of contributions and the income on those contributions from another qualified eligible retirement plan to the member's vested account as allowed under applicable federal law.

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

~~(2) (a) After-tax money may not be transferred or rolled over to a retirement account unless the money was contributed to the system's defined benefit plan on an after-tax basis.~~

~~(b) To the extent that the transfer or rollover is disallowed under the Internal Revenue Code provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a member may not transfer or rollover to a retirement account contributions made under sections 403(b) and 457 of the Internal Revenue Code. The board shall accept a direct rollover of eligible distributions from another eligible retirement plan only to the extent permitted by the Internal Revenue Code."~~

Section 49. Section 19-3-2116, MCA, is amended to read:

"19-3-2116. Vesting -- mandatory termination of membership -- forfeitures. (1) ~~A member is fully vested with~~ member's contribution account includes the member's contributions and the income on those contributions and is vested from the date that the employee becomes a member of the plan, ~~but is not considered a vested member unless the member meets the criteria under subsection (2).~~

~~(2) A member is not vested with~~ member's employer contribution account includes the employer's contributions and the income on those contributions and ~~does not attain the status of a vested member until is~~ vested only when the member has a total of 5 years of membership service under the system.

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

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

~~(3)(5) A member who terminates covered employment before becoming a vested member shall terminate plan membership by removing from the plan the member's entire vested account balance as provided in 19-3-2123 and subject to 19-3-2126. The employer contributions and income on the employer's contributions in the member's retirement account are forfeited and must be allocated as provided in 19-3-2117.~~

(6) If the member's employer contribution account is not vested upon termination of covered employment, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117."

Section 50. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) Each plan member's retirement account must be credited with the ~~employee~~ member contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, an amount equal to:

- (a) 4.19% of compensation must be allocated to the member's retirement account;
- (b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate; and
- (c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(c).

(3) Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141.

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

Section 51. Section 19-3-2126, MCA, is amended to read:

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

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

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a ~~nonvested~~ member who terminates from service and whose vested account balance is between \$200 and \$5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

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

(b) The direct rollover distribution must be paid directly to the ~~qualified~~ eligible retirement plan.

~~(c) Except as provided in 19-3-2142, the amount of the member's vested account balance not eligible for a direct rollover distribution under subsection (4)(a) must be paid to the member in a lump sum.~~

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

~~(5)(6)~~ The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation."

Section 52. Section 19-3-2133, MCA, is amended to read:

"19-3-2133. ~~Creation of employee~~ Employee investment advisory council. The board shall, ~~by August 1, 1999,~~ create an employee investment advisory council. The advisory council shall meet at least ~~quarterly~~ four times a year to:

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

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

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

Section 53. Section 19-3-2141, MCA, is amended to read:

"19-3-2141. Long-term disability plan -- benefit amount -- eligibility -- administration and

rulemaking. (1) (a) Except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

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

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

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

(b) if the member's disability occurred when the member was under 60 years of age, the benefit may be paid only until the member reaches 60 65 years of age; and

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

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

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

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

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

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

(7) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section."

Section 54. Section 19-5-101, MCA, is amended to read:

"19-5-101. Definitions. Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Compensation" means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, paid to a

member.

(2) "Current salary" means the current compensation for the office retired from.

(3) "Highest average compensation" means ~~the average of the~~ a member's highest average monthly compensation during any 36 consecutive months of membership service ~~in the retirement system~~.

(4) "Involuntary retirement" means a retirement not for cause and before retirement age.

(5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."

Section 55. Section 19-5-301, MCA, is amended to read:

"19-5-301. Membership -- inactive vested members -- inactive nonvested members. (1) Except for a judge or justice who elected in writing to remain under the public employees' retirement system on or before October 1, 1985, a judge of a district court, a justice of the supreme court, and the chief water judge provided for in 3-7-221 must be members of the Montana judges' retirement system.

(2) A judge pro tempore is not eligible for active membership in the retirement system.

(3) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(4) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 56. Section 19-5-409, MCA, is amended to read:

"19-5-409. Application to purchase additional service. (1) At any time before retirement, a member may file a written application with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has in the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board.

(3) A member may not purchase more than 5 years of service credit under 19-2-707 and this section.

(4) Service credit purchased under this section is not membership service and may not be used to qualify

a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 57. Section 19-5-501, MCA, is amended to read:

"19-5-501. Eligibility for service retirement. (1) A member who has at least 5 years of membership service and has reached the age of 60 has attained normal retirement age and may retire and receive the service retirement benefits provided in 19-5-502.

(2) Retirement benefits may not be approved by the board while the member is drawing full compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge pro tempore."

Section 58. Section 19-5-502, MCA, is amended to read:

"19-5-502. Service retirement benefit. ~~Upon retirement~~ After termination from service and upon application for service retirement, the service retirement benefit must be as follows:

(1) for members not covered under 19-5-901, 3 1/3% a year of the member's current salary for the first 15 years of ~~credited~~ service credit and 1.785% a year for each year of ~~credited~~ service credit after 15 years; or

(2) for members covered under 19-5-901, the benefit provided under subsection (1) except that the benefit must be calculated using highest average compensation."

Section 59. Section 19-5-701, MCA, is amended to read:

"19-5-701. Optional forms of benefits -- designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to a contingent annuitant as follows:

(a) option 2--a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3--a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4--upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ has no right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ a family law order, as defined in 19-2-907, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the ~~value~~ amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has ~~not been granted the~~ no right to receive the optional retirement benefit as part of ~~the divorce settlement~~ a family law order as defined in 19-2-907.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 60. Section 19-6-101, MCA, is amended to read:

"19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid ~~for services to a member out of from~~ funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by the Internal Revenue Code have been state or federal law are made, and exclusive of

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

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

(3) "Highest average compensation" means ~~the~~ a member's highest average monthly compensation received by a member for during any 3 years of continuous service upon which contributions have been made 36 consecutive months of membership service or, in the event a member has not served ~~3 years~~ at least 36 months, the total compensation earned divided by the number of months ~~served of service~~. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to ~~an employee~~ the member upon termination of ~~service employment~~ may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

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

(5) "Survivor" means a surviving spouse or dependent child of a member."

Section 61. Section 19-6-401, MCA, is amended to read:

"19-6-401. Payments into pension trust fund. All appropriations made by the state, all contributions

by members, in the amount specified, all interest on and increase of the investments and money under this pension trust fund, all fees or portions of fees that are required by law to be paid to the retirement system or trust fund, and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 must be ~~paid to~~ deposited in the pension trust fund."

Section 62. Section 19-6-502, MCA, is amended to read:

"19-6-502. Service retirement benefit. ~~Upon retirement~~ After termination from service and upon application for service retirement, a member must receive a service retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."

Section 63. Section 19-6-503, MCA, is amended to read:

"19-6-503. Early retirement benefit for member discontinued from service other than for cause. If a member is discontinued from service other than for cause after having completed 5 years of membership service but before reaching normal retirement age, the member must, upon filing a written application with the board, be paid an early service retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60."

Section 64. Section 19-6-601, MCA, is amended to read:

"19-6-601. Disability retirement benefit. (1) ~~In the case of the disability of a~~ A member who becomes disabled must be granted a disability retirement benefit ~~must be granted the member~~ that is the actuarial equivalent of the service retirement benefit under 19-6-502 standing to the member's credit at the time of the member's disability retirement. ~~If the disability is~~

(2) A member who becomes disabled as a direct result of any the member's service to the Montana highway patrol in the line of duty, then the member who is disabled must be retired on a disability retirement benefit of one-half the member's highest average compensation regardless of the member's length of service.;

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

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.

~~(2)(3)~~ (3) Upon the death of a ~~retired~~ member receiving a disability retirement benefit ~~as provided in subsection (1) under this section~~, the benefit must be paid to the member's surviving spouse or dependent child;

if there is a spouse or child, in the same manner is eligible for benefits as provided for in 19-6-505(2) and (3)."

Section 65. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees. (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's ~~covered~~ service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) The ~~lump-sum payment~~ amount of fees transferred to the pension trust fund pursuant to 61-3-527(4)(b) and 61-3-562(1)(b) must be distributed proportionally as a lump-sum benefit payment to all each eligible recipients recipient based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service credit for the purposes of the distributions;

(b) any recipient of a ~~service~~ retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient--sec. 1, Ch. 567, L. 1991.)"

Section 66. Section 19-6-801, MCA, is amended to read:

"19-6-801. Application to purchase military service. (1) (a) Except as otherwise provided in this ~~section~~ subsection (1)(b) and subject to 19-6-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

~~(2) To purchase this military service:~~

~~—— (a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.~~

~~—— (b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3)(b) A member is not eligible to purchase active military service credit under ~~this section~~ subsection (1)(a) if the member:~~

~~(a)(i) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;~~

~~(b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or~~

~~(c)(iii) is eligible to receive credit for that service in any other retirement system or plan.~~

(2) (a) Except as provided in subsection (2)(b) and subject to 19-6-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit under this section:

(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the

purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The combined total of active and reserve military service credit that a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.

(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation."

Section 67. Section 19-6-803, MCA, is amended to read:

"19-6-803. Application to purchase law enforcement service performed in another state. (1) Subject to 19-6-805, a member with at least 5 years of membership service credit may, at any time before retirement, file a written application with the board to purchase 1 year of out-of-state law enforcement employment for each year of service credit, unless the member is eligible to receive a retirement benefit in another system or plan for that same service.

(2) To purchase this service credit, a member shall pay the actuarial cost of the service credit in the retirement system, as determined by the board, based on:

(a) the member's compensation for the 12 months immediately preceding the date of the member's election to ~~cover~~ purchase the service credit under the retirement system; and

(b) the actuarial rate in effect at the time of purchase of service credit.

(3) Service credit purchased under this section may not be used to qualify a member to purchase military service credit under 19-6-801.

(4) Service credit purchased under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If, upon retirement, a member's purchased service credit may not be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid by the member to purchase the service credit, plus regular interest on that amount."

Section 68. Section 19-6-804, MCA, is amended to read:

"19-6-804. Application to purchase additional service. (1) Subject to 19-6-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has in the retirement system.

(2) To purchase service credit under this section, a member shall pay the actuarial cost of the service

credit, based on the system's most recent actuarial valuation as determined by the board.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 69. Section 19-6-805, MCA, is amended to read:

"19-6-805. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service credit under 19-6-801, 19-6-803, and 19-6-804."

Section 70. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid ~~for services to a member out of~~ from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by the Internal Revenue Code state or federal law are made and exclusive of.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Highest average compensation" means ~~the a member's~~ highest average monthly compensation ~~received by a member for~~ during any 36 consecutive months of continuous service from which contributions were deducted membership service or, in the event that a member has not served ~~3 years~~ at least 36 months, the total compensation earned divided by the number of months ~~served~~ of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to ~~an employee~~ the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

Section 71. Section 19-7-301, MCA, is amended to read:

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

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

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

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

(3) A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

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

(5) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 72. Section 19-7-312, MCA, is amended to read:

"19-7-312. Transfer of membership -- qualification purchase of previous service. A person who elects to become a member of the sheriffs' retirement system pursuant to 19-7-301 may transfer the member's ~~creditable~~ service credit in the public employees' retirement system into the sheriffs' retirement system under the provisions of ~~19-7-802~~ [section 1]."

Section 73. Section 19-7-502, MCA, is amended to read:

"19-7-502. ~~Early retirement~~ Retirement option. A member with at least 5 but less than 20 years of membership service ~~and who has not met the minimum eligibility requirements for service retirement~~ may retire with ~~an early a~~ retirement benefit commencing no sooner than the first day of the month following the member's 50th birthday. The ~~early~~ retirement benefit must be calculated to be the actuarial equivalent of the member's service retirement benefit as otherwise accrued, based upon payment commencing when the member would have completed 20 years of membership service or reached age 60, whichever event would have occurred first."

Section 74. Section 19-7-601, MCA, is amended to read:

"19-7-601. Disability retirement benefit. ~~(1) In the case of the disability of a member, regardless of the member's length of service, A member who becomes disabled must be granted a disability retirement benefit must be awarded to the member based on that is the actuarial equivalent of the member's service retirement benefit under 19-7-503 standing to the member's credit at the time of the member's disability retirement. If the disability is~~

~~(2) A member who becomes disabled as a direct result of the member's service as a member in the line of duty, then the member must be awarded a benefit of one-half of the member's highest average compensation;:~~

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

~~(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."~~

Section 75. Section 19-7-801, MCA, is amended to read:

"19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation -- payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service credit in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1,

1979, may not be transferred.

(2) A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(4) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service ~~credited~~ credit under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an optional retirement benefit elected under 19-7-1001. The final salary or highest average compensation for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service ~~credited~~ credit, of the combined benefit.

(5) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired

member's designated beneficiary."

Section 76. Section 19-7-803, MCA, is amended to read:

"19-7-803. Application to purchase military service. (1) ~~(a)~~ Except as otherwise provided in ~~this section subsection (1)(b)~~ and subject to 19-7-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation:~~

~~(3)(b)~~ A member is not eligible to purchase active military service credit under ~~this section subsection (1)(a)~~ if the member:

~~(a)(i)~~ has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)(ii)~~ is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)(iii)~~ is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-7-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

(4) Military service credit purchased under this section subsection (1) or (2) is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."

Section 77. Section 19-7-804, MCA, is amended to read:

"19-7-804. Application to purchase additional service. (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service credit under this section, a member shall pay the actuarial cost of the service

credit in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.

(4) Service credit purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits."

Section 78. Section 19-7-805, MCA, is amended to read:

"19-7-805. Service purchase limitation. A member may not purchase a combined total of more than 5 years of service credit under 19-7-803 and 19-7-804."

Section 79. Section 19-7-1001, MCA, is amended to read:

"19-7-1001. Optional forms of benefits -- designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to a contingent annuitant, as follows:

(a) option 2--a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3--a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4--upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ has no right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ a family law order, as defined in 19-2-907, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the ~~value~~ amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has ~~not been granted the~~ no right to receive the optional retirement benefit as part of the ~~divorce settlement~~ a family law order, as defined in 19-2-907.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 80. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid ~~for services to a member out of~~ from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work

because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by the Internal Revenue Code state or federal law are made and exclusive of.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Highest average compensation" means ~~the~~ a member's highest average monthly compensation ~~received by a member for during any 3 years~~ 36 consecutive months of ~~continuous service upon which contributions were made~~ membership service or, in the event a member has not served ~~3 years~~ at least 36 months, the total compensation earned divided by the number of months ~~served of service~~. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to ~~an employee~~ the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation appointed as a peace officer pursuant to 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 81. Section 19-8-301, MCA, is amended to read:

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

- (a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;
- (b) motor carrier officers employed by the department of transportation;
- (c) campus security officers employed by the university system;
- (d) wardens and deputy wardens employed by the department of corrections;

- (e) corrections officers employed by the department of corrections;
- (f) probation and parole officers employed by the department of corrections;
- (g) stock inspectors and detectives employed by the department of livestock;
- (h) motor vehicle inspectors employed by the department of justice; and
- (i) drill instructors employed by the department of corrections.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 82. Section 19-8-302, MCA, is amended to read:

"19-8-302. Public employees' retirement system -- transfer of membership. (1) Except as provided in subsections (2) and (4), an eligible peace officer shall become a member of the game wardens' and peace officers' retirement system on the first day of ~~covered~~ service.

(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election that must be received by the board no later than December 31, 2001.

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

(4) A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election with the board no later than 30 days after transfer to the new position."

Section 83. Section 19-8-308, MCA, is amended to read:

"19-8-308. Transfer of service. A person who elects to become a member of the game wardens' and peace officers' retirement system pursuant to 19-8-302 may transfer the member's service credit in the public employees' retirement system into the game wardens' and peace officers' retirement system under the provisions of 19-8-902 [section 1]."

Section 84. Section 19-8-604, MCA, is amended to read:

"19-8-604. Early retirement benefit. If a member is discontinued from service after having completed 5 years of membership service but before reaching normal retirement age, the member must, upon filing a written application with the board, be paid a service retirement benefit beginning on the member's 55th birthday calculated under the provisions of 19-8-603."

Section 85. Section 19-8-701, MCA, is amended to read:

"19-8-701. Disability retirement benefit. (1) A member who ~~is determined by the board to be~~ becomes disabled must be granted a disability retirement benefit ~~in an amount calculated on that is~~ the actuarial equivalent of the service retirement benefit under 19-8-603 standing to the member's credit at the time of the member's disability retirement.

(2) ~~If the disability is~~ A member who has at least 5 years of membership service and who becomes disabled as a direct result of any the member's service to the state in the line of duty and the member has at least 5 years of membership service, the member who is disabled must be retired on a disability retirement benefit of not less than one-half of the member's highest average compensation.;

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

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."

Section 86. Section 19-8-801, MCA, is amended to read:

"19-8-801. Optional forms of benefits -- designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must, in lieu of all other benefits under this chapter, be converted into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to a contingent annuitant as follows:

(a) option 2--a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3--a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4--upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ has no right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ a family law order, as defined in 19-2-907, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the ~~value~~ amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional

retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of ~~the divorce settlement~~ a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 87. Section 19-8-901, MCA, is amended to read:

"19-8-901. Application to purchase military service. (1) (a) Except as ~~otherwise~~ provided in ~~this section subsection (1)(b)~~ and subject to 19-8-906, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board.~~

~~(2)(b)~~ A member is not eligible to purchase active military service credit under ~~this section subsection (1)(a)~~ if the member:

~~(a)(i)~~ has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)(ii)~~ is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)(iii)~~ is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-8-906, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit under this section, the member shall pay the actuarial cost of the member's active or reserve military service based on the system's most recent actuarial valuation."

Section 88. Section 19-8-904, MCA, is amended to read:

"19-8-904. Application to purchase additional service. (1) Subject to 19-8-906, a member with at least 5 years of membership service, may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified in the retirement system.

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

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 89. Section 19-8-905, MCA, is amended to read:

"19-8-905. Absence due to injury or illness. (1) Time, not to exceed 5 years, during which a member is absent because of an injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service ~~credits~~ credit for the absence unless the member complies with subsections (2) and (3), in which case the absence is considered as time spent in service for both service ~~credits~~ credit and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to ~~covered~~ service to the date the member contributes for the period of absence.

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

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

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence."

Section 90. Section 19-8-906, MCA, is amended to read:

"19-8-906. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service credit under 19-8-901 and 19-8-904."

Section 91. Section 19-9-104, MCA, is amended to read:

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

(1) (a) "Compensation" means the remuneration, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, paid for services to a member out of from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by the Internal Revenue Code have been state or federal law are made.

(b) Compensation does not include:

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

(ii) maintenance, allowances, and expenses.

(2) "Dependent child" means a child of a deceased member:

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

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

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member; averaged over the last 36 months of the member's service or, in the event a member has not ~~been a member that long, over the period of membership~~ served at least 36 months, the total compensation earned divided by the number of months of service.

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

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting officer with the requisite professional certification and licensing.

(8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(9) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

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

(11) "Survivor" means a surviving spouse or dependent child of the member."

Section 92. Section 19-9-301, MCA, is amended to read:

"19-9-301. Active membership -- inactive vested member -- inactive nonvested member. (1) A police officer becomes an active member of the retirement system:

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

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

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing a written election with the board no later than 30 days after the date of the employer's election.

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

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

(4) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible

for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 93. Section 19-9-403, MCA, is amended to read:

"19-9-403. Application to purchase military service. (1) (a) Except as otherwise provided in this section subsection (1)(b) and subject to 19-9-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active duty service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation:~~

~~———(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(4)(b) A member is not eligible to purchase active military service credit under this section subsection (1)(a) if the member:~~

~~(a)(i) has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;~~

~~(b)(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or~~

~~(c)(iii) is eligible to receive credit for that service in any other retirement system or plan.~~

(2) (a) Except as provided in subsection (2)(b) and subject to 19-9-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit under subsection (2)(b) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

(4) The combined total of active and reserve military service a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less."

Section 94. Section 19-9-405, MCA, is amended to read:

"19-9-405. Purchase of other Montana public service. (1) (a) A member may, at any time before

retirement, file a written application with the board to purchase all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game wardens' and peace officers' retirement system to the extent that the member either has received or is eligible to receive a refund of the member's accumulated contributions.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the municipal police officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation 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 municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the regular contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, file a written application with the board to purchase all or a portion of full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to the board's rules. To purchase service credit under this section, the employee shall pay the actuarial cost of the service credit in the municipal police officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service."

Section 95. Section 19-9-406, MCA, is amended to read:

"19-9-406. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service credit under 19-9-403 and 19-9-411."

Section 96. Section 19-9-410, MCA, is amended to read:

"19-9-410. Transfer to public employees' retirement system. When an injured nonvested member accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under the public employees' retirement system, all service and contributions previously credited with the municipal police officers' retirement system must be transferred from the municipal police officers' retirement system pension trust fund

along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred must be equal to the amount that would have been contributed if the transferred service credit had been normal employment covered under the public employees' retirement system."

Section 97. Section 19-9-411, MCA, is amended to read:

"19-9-411. Application to purchase additional service. (1) Subject to 19-9-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

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

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 98. Section 19-9-903, MCA, is amended to read:

"19-9-903. Amount of disability retirement benefit -- continuation of benefit after death of member.

(1) A member who ~~is eligible under 19-9-902 before earning 20 years of service credit must receive a disability retirement benefit equal to one-half the member's final average compensation~~ becomes disabled:

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

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

~~(2) A member who is retired under 19-9-902 and who, at the time of the member's injury or disability, was eligible at the member's option to be retired under 19-9-801 but had elected to serve years in excess of 20 years of service credit and was then serving additional years must be paid for the additional years at the rate prescribed in 19-9-804.~~

~~(3)~~(2) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-9-804."

Section 99. Section 19-9-1202, MCA, is amended to read:

"19-9-1202. Definitions. Unless the context requires otherwise, as used in this part, the following

definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to this part.

(2) "DROP accrual" means the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired, multiplied by each month of the DROP period that the participant completes, plus interest.

~~(2)~~(3) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in this part.

~~(3)~~(4) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(5) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated employment and retired.

~~(4)~~(6) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part."

Section 100. Section 19-9-1204, MCA, is amended to read:

"19-9-1204. Eligibility -- participation criteria -- membership status -- service interruptions. (1) Any member eligible to retire under 19-9-801(2) is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or ~~disability~~ other temporary absence from work and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period."

Section 101. Section 19-9-1205, MCA, is amended to read:

"19-9-1205. Retirement system contributions -- benefit payments to individual accounts -- investment returns. (1) During a member's participation in the DROP, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(2) For each DROP participant, the board shall calculate a DROP benefit accrual equal to the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired, multiplied by each month of the DROP period that the participant completes."

Section 102. Section 19-9-1206, MCA, is amended to read:

"19-9-1206. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit and the member's accumulated contributions minus any benefits paid from the member's account, including monthly DROP accruals.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

Section 103. Section 19-9-1207, MCA, is amended to read:

"19-9-1207. Employment and benefits after DROP period. (1) Except as otherwise provided in this section, if a member continues employment in a covered position after the DROP period ends, the board shall consider the member newly hired as of the date the DROP period ended.

(2) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(3) A member who, after the end of the DROP period, continues employment in a covered position:

(a) is immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) is, upon terminating covered employment, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter;

(ii) a service retirement benefit based on the member's service credit and final average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter; and

(iii) the member's DROP benefit."

Section 104. Section 19-9-1208, MCA, is amended to read:

"19-9-1208. Distribution of DROP benefit. (1) Upon termination of covered employment, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another ~~qualified~~ eligible retirement plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 and the Internal Revenue Code.

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

Section 105. Section 19-13-104, MCA, is amended to read:

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

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

(2) "Compensation" means:

(a) for a full-paid firefighter, the ~~regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid for the firefighter's service as a firefighter out of~~ paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed ~~under the Internal Revenue Code have been~~ by state and federal law are made;

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

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

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of

sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

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

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

(ii) maintenance, allowances, and expenses.

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

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

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

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, ~~if the member has not been a member that long, over the period of the member's~~ in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of ~~service~~ employment may be used to replace, on a month-for-month basis, the ~~normal~~ regular compensation for a month or months included in the calculation of final average compensation.

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

(7) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards provided in 7-33-4106.

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

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter.

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

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

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

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

Section 106. Section 19-13-301, MCA, is amended to read:

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

Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:

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

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

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

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

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board within 6 months of becoming a part-paid firefighter or March 21, 2001, whichever is later.

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

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

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

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

(5) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

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

(b) A firefighter making an election to remain in the public employees' retirement system shall make the

election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system."

Section 107. Section 19-13-403, MCA, is amended to read:

"19-13-403. Application to purchase military service. (1) (a) Except as ~~otherwise~~ provided in ~~this section~~ subsection (1)(b) and subject to 19-13-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active duty service in the armed forces of the United States ~~for the purpose of calculating retirement benefits.~~

~~(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.~~

~~(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(3)(b)~~ A member is not eligible to purchase active military service credit under ~~this section~~ subsection (1)(a) if the member:

~~(a)(i)~~ has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)(ii)~~ is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)(iii)~~ is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-13-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

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

(4) The combined total of active and reserve military service credit a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.

~~(4)(5)~~ Military service credit purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."

Section 108. Section 19-13-405, MCA, is amended to read:

"19-13-405. Application to purchase additional service. (1) Subject to 19-13-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

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

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 109. Section 19-13-406, MCA, is amended to read:

"19-13-406. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service credit under 19-13-403 and 19-13-405."

Section 110. Section 19-13-701, MCA, is amended to read:

"19-13-701. Eligibility for service retirement. (1) A member who has completed 20 years or more of membership service has attained normal retirement age and is eligible for service retirement.

(2) A vested member who terminates service before ~~the minimum retirement date~~ completing 20 years of service and keeps the member's accumulated contributions on deposit has attained normal retirement age and is eligible for service retirement commencing on the member's minimum retirement date."

Section 111. Section 19-13-704, MCA, is amended to read:

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

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

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

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

(ii) if the member retires with 20 or more years of membership service, a benefit equal to 50% of the

member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years.

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

Section 112. Section 19-13-803, MCA, is amended to read:

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

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

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) ~~A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's~~ Upon the death of a member receiving a disability retirement benefit under this section, the member leaves no member's surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as they remain dependent children child is eligible for benefits as defined provided in 19-13-104."

Section 113. Section 19-13-1007, MCA, is amended to read:

"19-13-1007. Minimum benefit adjustment. (1) The following applies to a member with 10 or more years of membership service who has not elected to be covered under 19-13-1010:

(a) For the member or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704, the disability retirement benefit provided in 19-13-803, and the survivorship benefit provided in 19-13-902 may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of the employer that last employed the member as a firefighter, as provided each year in the budget of that employer.

(b) If after a member retires, the employer that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsection (1)(a) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter.

(2) If the employment of a vested member hired before July 1, 1981, who has not elected to be covered

under 19-13-1010 is involuntarily discontinued because of the termination of employment of all full-paid firefighters of the employer that employed the member, the member's service retirement benefit provided in 19-13-704 and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 5 but less than 20 years of membership service, 2.5% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

Section 114. Section 19-17-108, MCA, is amended to read:

"19-17-108. Credit for service as volunteer firefighter. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or supervisor of the fire company;

(b) the volunteer firefighter's participation in the program is documented in the fire department records filed and maintained by the chief or supervisor;

~~(b)~~(c) the fire company maintained firefighting equipment that is in serviceable condition and owns one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more; and

~~(c)~~(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates."

Section 115. Section 19-17-402, MCA, is amended to read:

"19-17-402. Certificate of eligibility. The chief or presiding officer of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file a certificate on a form to be provided by the board, subscribed and verified under oath before a notary, stating whether the company qualified under 19-17-108(3) during the preceding fiscal year. The certificate must contain the date of organization. The certificate must list the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-17-108(3). The certificate must be maintained by the board for the purpose of establishing service for members and eligibility for benefits."

Section 116. Section 19-17-403, MCA, is amended to read:

"19-17-403. Application for benefits. (1) A member may, as provided in this section, apply for retirement benefits before terminating ~~covered~~ service, but commencement of the benefits must be as provided in 19-17-411.

(2) A member, surviving spouse, or dependent child shall apply for benefits on a form provided by the board.

(3) The application must contain:

(a) the name, address, and date of birth of the member, surviving spouse, or dependent child;

(b) the date of birth of the member;

(c) the date of the member's death, if applicable; and

(d) the fiscal years during which service as an active member is claimed and the names of the fire companies with which the service was rendered.

(4) The board may require any proof of age, death, and service that it may consider proper, but it must accept a certificate properly completed and timely filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of service."

Section 117. Section 19-17-405, MCA, is amended to read:

"19-17-405. Survivorship benefits to surviving spouse or dependent children. (1) Subject to subsection (2) and the limitation in subsection (3) ~~(4)~~, survivorship benefits equal to the full or partial pension benefits otherwise payable to the deceased member must be paid or continue to be paid to:

(a) the surviving spouse or, unless the spouse is convicted of knowingly, purposely, or intentionally

causing a member's death or disability;

(b) the dependent children upon the spouse's death; or

(c) if the deceased member left no surviving spouse but left a dependent child, to the guardian or other person having custody of the dependent child.

(2) Benefits payable to a dependent child must be paid pursuant to 19-2-803.

~~(2)~~(3) The survivorship benefit must be paid in each of the following circumstances:

(a) the death on or after July 1, 1995, of a member who had at least 10 years of service and who was not receiving pension benefits; or

(b) the death on or after July 1, 1985, of a retired member who was receiving pension benefits but who had not received benefits for a total of 40 months.

~~(3)~~(4) Survivorship benefits under subsection (1) terminate when benefits have been paid for a total of 40 months, including any pension or disability benefits paid to the retiree before death. At the request of the recipient, a lump-sum payment may be made in lieu of up to 40 months of survivorship benefits."

Section 118. Section 19-50-102, MCA, is amended to read:

"19-50-102. Deferred compensation programs permitted -- rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954, {26 U.S.C. 457}, as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee's compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The board or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political subdivision employee deferred compensation plan funds may be invested. The board or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the

changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the board or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission, unless exempt from the commission's regulation;

(e) mutual funds provided through contracts maintained by the board or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission, unless exempt from the commission's regulation; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The board or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

Section 119. Section 25-13-608, MCA, is amended to read:

"25-13-608. Property exempt without limitation -- exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support; ~~and~~

(h) a burial plot for the judgment debtor and the debtor's family-;

(i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5 through 9, and 13, as provided by 19-2-1004; and

(j) benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as provided by 19-20-706.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse."

NEW SECTION. Section 120. Repealer. Sections 19-3-509, 19-3-1604, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404, MCA, are repealed.

NEW SECTION. Section 121. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 2, part 7, and the provisions of Title 19, chapter 2, part 7, apply to [section 1].

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