

HOUSE BILL NO. 827

INTRODUCED BY D. HIMMELBERGER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' RETIREMENT SYSTEM; ESTABLISHING A SCHOOL AND PUBLIC EMPLOYEES' RETIREMENT PLAN AND SPECIFYING THE PLAN'S PROVISION OF RIGHTS, RESPONSIBILITIES, BENEFITS, AND FEATURES; PROVIDING FOR THE POWERS AND DUTIES OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD IN IMPLEMENTING AND ADMINISTERING THE NEW PLAN; REQUIRING NEW SYSTEM MEMBERS TO JOIN THE SCHOOL AND PUBLIC EMPLOYEES' RETIREMENT PLAN; SPECIFYING MEMBERSHIP AND VESTING CRITERIA FOR THE PLAN; PROVIDING FOR ACTUARIAL FUNDING OF DEFINED BENEFIT PLAN UNFUNDED LIABILITIES; ESTABLISHING CRITERIA FOR THE INVESTMENT ALTERNATIVES THAT MAY BE OFFERED IN THE NEW PLAN; SPECIFYING THE PAYOUT AND BENEFIT OPTIONS AVAILABLE WITHIN THE NEW PLAN; PROVIDING FOR PAYMENT OF CERTAIN LOCAL GOVERNMENT ADMINISTRATIVE EXPENSES; REQUIRING THAT THE PUBLIC EMPLOYEES' RETIREMENT BOARD FILE FOR AN INTERNAL REVENUE SERVICE DETERMINATION; APPROPRIATING FUNDS AND AUTHORIZING LOANS FROM THE DEPARTMENT OF ADMINISTRATION TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO PAY FOR STARTUP COSTS OF THE SCHOOL AND PUBLIC EMPLOYEES' RETIREMENT PLAN; AMENDING SECTIONS 2-15-1009, 2-18-704, 17-7-502, 19-2-302, 19-2-303, 19-2-401, 19-2-403, 19-2-405, 19-2-407, 19-2-408, 19-2-409, 19-2-502, 19-2-503, 19-2-504, 19-2-505, 19-2-602, 19-2-902, 19-2-907, 19-2-908, 19-2-909, 19-2-1004, 19-3-401, 19-3-2111, 19-3-2133, 19-20-302, 20-9-501, 20-15-404, AND 25-13-608, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 23] may be cited as the "School and Public Employees' Retirement System Act".

NEW SECTION. **Section 2. Definitions.** Unless the context requires otherwise, as used in [sections 1 through 23], the following definitions apply:

(1) "Additional contributions" means contributions made by a member of the plan to purchase various types of optional service credit as allowed by the plan.

(2) "Benefit" means a payment or distribution under the plan for the exclusive benefit of a member or the member's beneficiary or an annuity purchased under [section 19 or 20].

(3) "Compensation":

(a) for a covered employee who meets the description of an active member under 19-20-302, has the same meaning as "earned compensation" as defined in 19-20-101; and

(b) for a covered employee who is not included under subsection (3)(a), has the meaning provided in 19-3-108.

(4) "Covered employer" means an employer who employs employees in a covered position.

(5) "Defined benefit retirement plan" means the defined benefit retirement plan provided for under Title 19, chapter 3, or the defined benefit retirement plan provided for under Title 19, chapter 20.

(6) (a) "Employer" means a governmental agency participating in the plan on behalf of its eligible employees. Except as provided in subsection (6)(b), the term includes:

(i) the state, including the Montana university system;

(ii) each school district; and

(iii) a city, town, county, tax or assessment district, other political subdivision of the state or an interlocal governmental entity whenever the city, town, county, tax or assessment district, other political subdivision of the state or the interlocal governmental entity is identified as being responsible for paying retirement contributions pursuant to an interlocal agreement under 7-11-105.

(b) A governmental entity that may otherwise be an employer for the purposes of subsection (6)(a), is not an employer under [sections 1 through 23] for employees who are members of a defined benefit plan provided for in any of the chapters enumerated in 19-2-302, or the defined contribution plan provided for in Title 19, chapter 3, part 21, or in Title 19, chapter 20 or 21.

(7) "Excess unfunded actuarial liability" means the amount of unfunded actuarial liability that results in the amortization period of the unfunded actuarial liability exceeding 30 years.

(8) "Member" means:

(a) an active member;

(b) an inactive member; and

(c) a person who is receiving a benefit based on the person's previous service credited in a retirement system.

(9) "Pension" means benefit payments derived from contributions to the plan made from state-controlled or employer-controlled funds.

(10) "Plan" means the school and public employees' retirement plan provided for in [section 3].

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

(12) "Teachers' retirement system" means the teachers' retirement system provided for in Title 19, chapter 20.

NEW SECTION. Section 3. Retirement plan established -- assets to be held in trust -- contracted services. (1) The board shall establish a school and public employees' retirement plan in accordance with the provisions of [sections 1 through 23]. The plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a governmental plan qualified pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations. A retirement account must be established for each member of the plan. Assets of the plan must be held in trust. The plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the state or a political subdivision.

(2) The board may contract for plan administration and use a competitive bidding process when contracting for consulting, educational, investment, recordkeeping, or other services for the plan.

NEW SECTION. Section 4. Legislative intent. It is the intent of the legislature that, in implementing and administering the 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 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 are encouraged to provide paid time for members to attend educational programs sponsored by the board pursuant to 19-3-112.

NEW SECTION. Section 5. Board powers and duties -- rulemaking. (1) The board has the powers and shall perform the duties regarding the plan as provided in 19-2-403, as applicable. The board may exercise

the powers and shall perform the duties provided in [sections 1 through 23].

(2) The board shall adopt rules necessary for the implementation of [sections 1 through 23] and other applicable sections in Title 19, chapter 2.

NEW SECTION. Section 6. Administrative expenses and fees. (1) The board may establish a fund within the plan for paying the plan's administrative expenses.

(2) The board may:

(a) assess fees to pay the reasonable administrative costs of the plan; and

(b) negotiate with a vendor or vendors for vendor reimbursement of board administrative expenses for the plan.

(3) All fees assessed must be fully disclosed to plan members and treated as public information.

(4) Costs for the board to provide for contract oversight are included as part of the administrative expenses of the plan.

NEW SECTION. Section 7. Limited contract right. (1) Except as provided in subsection (2), the statutory provisions of the plan are subject to amendment by the legislature. Employees participating in the plan pursuant to [sections 1 through 23] do not have a contract right to the specific terms or conditions specified in statute on the date the employee's participation in the plan becomes effective.

(2) A member has a contract right to the contributions and earnings under the vesting provisions of [section 15].

NEW SECTION. Section 8. Membership -- nonapplicability to members of other retirement plans. (1) (a) Except as otherwise provided in [sections 1 through 23], each employee initially hired by a covered employer on or after [the effective date of this section] becomes a member of the plan on the first day of service. Each employer shall file with the board information affecting the employer's employees' status as members of the plan as the board may require.

(b) For the purposes of [sections 1 through 23], the employee's first day of service for the employee's first covered employer is the date on which the employee is initially hired.

(c) Unless otherwise provided for in this title, a member of the plan may not simultaneously be a member of the plan and of a defined benefit plan provided for in any of the chapters enumerated in 19-2-302, the defined contribution plan provided for in Title 19, chapter 3, part 21, the teachers' retirement system defined benefit plan

provided for in Title 19, chapter 20, or the university system optional retirement program established pursuant to Title 19, chapter 21. A period of service may not be credited in more than one retirement plan under this title.

(2) The provisions of [sections 1 through 23] do not apply to and do not affect the rights, privileges, or responsibilities of any person who is a member of any other retirement system or retirement plan covered in this title.

(3) Unless otherwise provided for in this title, a member of the plan or of a defined benefit plan provided for in any of the chapters enumerated in 19-2-302, the defined contribution plan provided for in Title 19, chapter 3, part 21, the teachers' retirement system defined benefit plan provided for in Title 19, chapter 20, or the university system optional retirement program established pursuant to Title 19, chapter 21, who becomes inactive after [the effective date of this section] and who returns to active membership remains a member of the retirement plan in which the person was a member on the date the member became inactive.

(4) The time during which a member of the plan who is an employee of a school district is absent from service during official vacation is counted as membership service.

NEW SECTION. Section 9. Member contributions. (1) Each member may contribute an amount of the member's compensation not to exceed the maximum amount allowed under section 415(c) of the Internal Revenue Code.

(2) The employer's payment of salary or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by the member during the period covered by the payment, except the employee's claim to the benefits to which the employee may be entitled under the provisions of [sections 1 through 23].

(3) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1).

(4) The member's contributions picked up by the employer must be designated for all purposes of the plan as the member's contributions, except for the determination of a tax upon a distribution from the plan. The contributions must be allocated as provided in [sections 10 and 11].

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

NEW SECTION. Section 10. Employer contributions. (1) Each employer shall contribute to the plan for each of the employer's employees except those properly excluded from membership. The amount that each employer is required to contribute under this section is the total amount of the employer's matching contribution determined under subsection (2), and the employer shall pay the amount to the board.

(2) (a) Subject to subsection (2)(b), the board shall allocate from the amount paid under subsection (1) an amount to each employee's retirement account as the employer's contribution match. The amount of the employer's contribution match may not exceed the amount of the member's contribution made under [section 9] and is limited as follows:

Employee's Years of Service		Employer's Maximum % Match of Employee's % Contribution
Is at Least	But is Less Than	
0	3	1%
3	5	2%
5	10	3%
10	15	5%
15	20	6%
20	25	7%
25	NA	8%

(b) (i) For a member whose contribution under [section 9] is less than or equal to the employer's maximum percentage contribution match allowed under subsection (2)(a) of this section, the employer's contribution match for that employee must equal the employee's contribution.

(ii) For a member whose contribution under [section 9] is greater than the employer's maximum percentage contribution match allowed under subsection (2)(a) of this section, the employer's contribution match must equal the maximum percentage contribution allowed for that employee under subsection (2)(a).

(3) If in any fiscal year the total amount of all employers' contributions paid under subsection (1), plus all income earned on the contributions, exceeds the total amount of all employers' contribution matches allocated to all members' accounts under subsection (2), the excess amount must be used by the board:

- (a) to pay the administrative expenses of the plan; and
- (b) if any money remains after paying administrative expenses, to pay down any excess unfunded actuarial liabilities determined under [section 17(2)] in shares proportionate to the excess unfunded actuarial

liabilities of each of the defined benefit plans by transferring the money to the appropriate fund.

(4) Employer contributions determined under subsection (2) must be allocated as provided in [section 16].

(5) The member's 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 in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

NEW SECTION. Section 11. Employer contributions for excess unfunded actuarial liability. (1) Within 6 months after [the effective date of this section], the board shall consult with covered employers, members, and others about the most prudent and beneficial approach to paying off the excess unfunded actuarial liabilities determined under [section 17(2)] and shall adopt schedules by which each of the excess unfunded actuarial liabilities determined under [section 17(2)] must be paid. The duration of time by which the unfunded actuarial liabilities must be paid in full under the schedules may not be more than 30 years.

(2) (a) Based on the schedules adopted under subsection (1), the board shall determine annually for the ensuing fiscal year the amount to be paid by each employer during the ensuing year and shall notify each employer of the amount before March 1 of each year.

(b) Each employer shall budget for the employer's contributions determined under subsection (2)(a) and shall pay the amount to the board at the times specified by the board.

(c) The amounts paid to the board under this subsection (2) must be deposited to the appropriate retirement trust funds for the single purpose of paying off the unfunded actuarial liabilities.

(3) Amounts paid by an employer under this section must be considered to be employer contributions for the purposes of the plan.

NEW SECTION. Section 12. Employers to include retirement contribution costs in budget. (1) A covered state employer shall include in the employer's budget and request a legislative appropriation for an amount necessary to pay for the state's part of the costs of [sections 1 through 23] for the employer's employees so that the legislature may make definite appropriations for the costs incurred by each employer with employees who are members of the plan.

(2) A covered employer, except state employers included under subsection (1), shall budget for an amount necessary to pay for the employer's part of the costs of [sections 1 through 23] for the employer's

employees so that the employer's governing body or budgeting authority may make definite appropriations or provision for the costs incurred by each employer with employees who are members of the plan.

NEW SECTION. Section 13. Credit of contributions made after member becomes inactive.

Contributions made on the basis of compensation earned by members after they are considered to be inactive members, as provided in 19-3-403(4), must be credited to the employer.

NEW SECTION. Section 14. Transfers or rollovers into plan -- service transfers -- membership credit for purposes of vesting. (1) Subject to subsection (2), the board shall accept the rollover of contributions and the income on those contributions from another eligible retirement plan to the member's vested account as allowed under applicable federal law.

(2) 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.

NEW SECTION. Section 15. Vesting -- mandatory termination of membership -- forfeitures. (1) A 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.

(2) (a) A member's employer contribution account includes the employer's contributions made pursuant to [section 10] and the income on those contributions and is vested only when the member has a total of at least 5 years of membership service under the plan.

(b) Employer contributions made pursuant to [section 11] and the income on those contributions do not vest with the member.

(3) A member's account for other contributions includes the member's rollovers of contributions made pursuant to [section 14] and income on those contributions and is vested from the date that the contribution is credited to the account.

(4) A member who terminates service after becoming a vested member may terminate plan membership as provided in [section 19] and subject to [section 22].

(5) A member who terminates service before becoming a vested member shall terminate plan membership as provided in [section 19] and subject to [section 22].

(6) If the member's employer contribution account is not vested upon termination of plan membership as provided in [section 19], the employer contributions and income are forfeited and must be allocated as

provided in [section 16].

NEW SECTION. Section 16. Allocation of contributions and forfeitures. (1) The member contributions made under [section 9] and additional contributions legally paid by the member pursuant to [sections 1 through 23] or federal law must be allocated to the member's retirement account.

(2) Of the employer contributions received by the board under [section 10], an amount equal to:

(a) the amount allocated under [section 10(2)], minus the amount prescribed in subsection (2)(b) of this section, must be allocated to the member's retirement account; and

(b) 0.04% of compensation must be allocated to the education fund provided for in 19-3-112.

(3) (a) A terminating member's forfeiture of the member's employer contributions and investment income on the employer contributions may not be used to increase the retirement account of the terminating member.

(b) The board shall allocate forfeitures under this section in the following order:

(i) to meet the plan's administrative expenses; and

(ii) if forfeited funds remain and if any excess unfunded actuarial liability determined under [section 17(2)] remains to be paid, to pay the excess unfunded actuarial liability in the manner described in [section 10(3)(b)].

NEW SECTION. Section 17. Determination of excess unfunded actuarial liability -- allocations.

(1) For the purposes of this section, "defined benefit plan" means the defined benefit plan provided for in Title 19, chapter 3, or the defined benefit plan provided for in Title 19, chapter 20.

(2) (a) The board shall determine for each defined benefit plan, as of the most recent actuarial valuation of the defined benefit plan prior to [the effective date of this section]:

(i) the total unfunded actuarial liability of the defined benefit plan;

(ii) the amount of the total unfunded actuarial liability that is not excess unfunded actuarial liability;

(iii) the amount of the total unfunded actuarial liability that is excess unfunded actuarial liability;

(iv) the share of the excess unfunded actuarial liability attributable to the members of the defined benefit plan who are assumed by the actuary to remain members of the defined benefit plan after [the effective date of this section];

(v) the sum of the amounts determined under subsections (2)(a)(ii) and (2)(a)(iv); and

(vi) the remainder determined by subtracting the sum calculated under subsection (2)(a)(v) from the total unfunded actuarial liability established under subsection (2)(a)(i).

(b) The amount finally determined under subsection (2)(a)(vi) is the excess unfunded actuarial liability

of the defined benefit plan provided for in Title 19, chapter 3, or Title 19, chapter 20, as applicable, attributable to individuals who become members of the school and public employees' retirement plan on or after [the effective date of this section].

NEW SECTION. Section 18. Investment alternatives -- notice of changes -- default fund. (1) The board shall provide for at least eight investment alternatives within the plan. In providing for the plan's investment alternatives, only a vendor or vendors offering suitable and well-managed investments, licensed to conduct business in Montana, and regulated by the United States securities and exchange commission may be used, unless exempt from the commission's regulation.

(2) The investment alternatives must include at least three that offer plan members the following:

(a) the ability to materially affect the potential return on amounts in the member's retirement account and the degree of risk to which those amounts are subject;

(b) a range of investment alternatives that:

(i) provides sound and diversified funds;

(ii) offers, under each alternative, a materially different risk and return characteristic than those found in the other alternatives;

(iii) allows the member or beneficiary to choose among the alternatives to achieve a portfolio with an aggregate risk and return characteristic to achieve a point within the risk and return range normally appropriate for the member or beneficiary based on age, income, and individual retirement goals; and

(iv) tends to minimize through diversification the overall risk of large losses.

(3) The investment alternatives may be the same as or include any of the investment alternatives offered to members of the defined contribution plan provided for in Title 19, chapter 3, part 21, or the state deferred compensation plan pursuant to Title 19, chapter 50.

(4) The board shall from time to time review the suitability and management of investment alternatives and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective.

(5) Assets within each member's retirement account must be invested as directed by the member.

(6) The board shall provide for a balanced fund to be established as a default investment fund. If a member fails to direct how the member's retirement account is to be invested, the member's entire account must be invested in the default fund.

(7) This section does not prohibit the board from contracting with the board of investments established

in 2-15-1808 to provide one or more investment alternatives within the plan.

NEW SECTION. Section 19. Payout of vested account balances when terminating plan membership. At any time after termination of service, a member or the member's beneficiary may terminate plan membership by filing a written application with the board and removing the member's vested account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

- (1) a direct rollover to an eligible retirement plan or to an individual retirement account or annuity pursuant to section 401(a)(31) of the Internal Revenue Code;
- (2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code; or
- (3) a lump-sum distribution of the member's vested account balance.

NEW SECTION. Section 20. Distribution options for plan members -- rulemaking -- minimum distribution requirements -- restrictions. (1) Subject to [sections 15 and 22], after termination of service, a member may leave the member's vested account balance in the plan, and the member is eligible for a distribution as provided in this section.

(2) After termination of service and upon filing a written application with the board, a member may, if provided for by the board, select a distribution option offered pursuant to a contract negotiated by the board with a plan vendor or vendors.

(3) A member who is less than 70 1/2 years of age and who returns to service may not continue to receive a distribution under this section while actively employed in a covered position.

(4) The board shall adopt rules to administer this section and to provide that distributions comply with the minimum distribution requirements established in the Internal Revenue Code and applicable under 19-2-1007.

NEW SECTION. Section 21. Death benefits. A member's beneficiary must be determined as provided in Title 19, chapter 2, part 8. Upon filing a written application with the board after the death of a member, the member's beneficiary is entitled to the member's vested account balance subject to [sections 1 through 23].

NEW SECTION. Section 22. 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) A member who terminates service and whose vested account balance is less than \$500 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 [section 16(3)]. The payment must be made as soon as administratively feasible without a written application from the member.

(3) Unless a written application is made pursuant to subsection (4)(a), a member who terminates service and whose vested account balance is between \$500 and \$5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in [section 16(3)].

(4) (a) Upon the written application of a member terminating service whose vested account balance is \$500 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, an eligible retirement plan that allows the rollover under applicable federal law.

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

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

(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.

NEW SECTION. Section 23. Rulemaking -- implementation -- certification that plan is effective.

(1) The public employees' retirement board may adopt rules necessary to implement the provisions of [sections 1 through 23].

(2) The board shall certify to the governor and the secretary of state the date on which the school and public employees' retirement plan established pursuant to [sections 1 through 23] has been ruled or certified by the commissioner of the internal revenue service as a qualified plan pursuant to section 401(a) of the Internal Revenue Code and shall provide a copy of the ruling or certification to the code commissioner.

(3) Rights under [sections 1 through 23] do not vest until the school and public employees' retirement plan becomes operational and is certified as provided in this section.

NEW SECTION. Section 24. Implementation schedule -- plan effective date. (1) In exercising its authority pursuant to [sections 1 through 23] to implement the plan, the board shall:

(a) by September 1, 2007, retain a qualified consultant to assist the board in developing appropriate requests for proposals for contracted services;

(b) by January 1, 2008, issue a request for proposals for all required contracted services;

(c) by August 1, 2008, award the contracts for all required contracted services; and

(d) by September 1, 2008, begin the development and modification of data systems and reporting processes required to administer the plan.

(2) The plan must become operational no later than July 1, 2009.

NEW SECTION. Section 25. Implementation team -- state agency assistance. The board shall create an implementation team to assist in establishing the plan. Upon request of the board, other state agencies may provide technical and professional assistance to support the implementation of the plan. The board may also request the assistance of other contracting employers and school districts and may provide compensation for personal services and other costs incurred by an agency, contracting employer, or school district to support the board pursuant to this section.

NEW SECTION. Section 26. Board to seek commissioner's ruling or opinion. The public employees' retirement board shall, as soon as possible, request in writing a ruling or opinion from the commissioner of the internal revenue service as to whether the school and public employees' retirement plan established pursuant to [sections 1 through 23] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code.

NEW SECTION. Section 27. Payment of local government and school administration expenses. To the extent that a local government unit, including a school district, is required to incur administrative expenses to start the school and public employees' retirement plan, the expenses must be paid by the public employees' retirement board from the proceeds of the loan authorized in [section 28].

NEW SECTION. Section 28. Loan authorized -- statutory appropriation. (1) If the startup costs of the school and public employees' retirement plan exceed the appropriation provided in [section 57], the board is authorized to take a long-term loan from the department of administration, which shall provide for the loan from

the investment fund type provided for in 17-2-102. The loan must be repaid with interest under terms and conditions determined by the department.

(2) Money borrowed by the board under this section is appropriated to the board to pay the startup costs of the school and public employees' retirement plan, including the costs incurred under [section 27]. The money for repayment of the loan is statutorily appropriated, as provided in 17-7-502.

Section 29. Section 2-15-1009, MCA, is amended to read:

"2-15-1009. Public employees' retirement board -- terms -- allocation. (1) There is a public employees' retirement board.

(2) The board consists of ~~seven~~ eight members appointed by the governor. The members are:

(a) ~~three~~ four public employees who are active members of a public retirement system, ~~(not~~ Not more than one of these members may be an employee of the same department, ~~and at least~~ one of these members must, ~~no later than July 1, 2003,~~ be a member of the defined contribution plan ~~created pursuant to~~ provided for in Title 19, chapter 3, part 21), and at least one of these members must be a member of the school and public employees' retirement plan provided for in [sections 1 through 23];

(b) one retired public employee who is a member of the public employees' retirement system;

(c) two members at large; and

(d) one member who has experience in investment management, counseling, or financial planning or who has other similar experience.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. The board shall hire necessary employees as provided in 19-2-404.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124."

Section 30. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, or the school and public employees' retirement plan provided for in [sections 1 through 23],

a member with at least 5 years of service and who is at least ~~age~~ 50 years of age while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with

substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129."

Section 31. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; [section 28]; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's

unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 32. Section 19-2-302, MCA, is amended to read:

"19-2-302. Applicability. Except as otherwise provided in this title, this chapter applies to the provisions and administration of the retirement systems and plans within the systems under Title 19, chapters 3, 5 through 9, and 13 and [sections 1 through 23] of this title."

Section 33. 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 or the school and public employees' retirement 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 or the school and public employees' 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, [section 19], or [section 20].

(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) "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 or the school and public employees' retirement plan.

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

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

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

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

(19) "Early retirement benefit" means the retirement benefit payable to a member following early

retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

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

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

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

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

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

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

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

(26) "Member" means either:

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

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

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

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

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

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

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

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

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

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

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

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

(36) "Retirement account" means an individual account within the defined contribution retirement plan or the school and public employees' retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution retirement plan or the school and public employees' retirement 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)~~ (9)(a); or

(c) in the case of the school and public employees' retirement plan, a benefit as defined in [section 2].

(38) "Retirement plan" or "plan" means ~~either a defined benefit plan under one of the public employee retirement systems enumerated in 19-2-302, or a~~ the defined contribution plan provided for in Title 19, chapter 3, part 21, or the school and public employees' retirement 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) "School and public employees' retirement plan" means the retirement plan provided for in [sections

1 through 23].

~~(40)~~(41) "Service" means employment of an employee in a position covered by a retirement system.

~~(41)~~(42) "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)~~(43) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

~~(43)~~(44) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(44)~~(45) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

~~(45)~~(46) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

~~(46)~~(47) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

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

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

~~(47)~~(48) (a) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

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

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

~~(c)~~(iii) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled.

(b) For the purposes of this subsection ~~(47)~~ (48), compensation does not mean compensation as a result

of a legal action, court order, or settlement to which the board was not a party.

~~(48)~~(49) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(49)~~(50) "Vested account" means an individual account within a defined contribution plan or the school and public employees' retirement plan that is for the exclusive benefit of a member or the member's beneficiary.

A vested account includes all contributions and the income on all contributions in each of the following accounts:

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

~~(50)~~(51) "Vested member" or "vested" means:

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

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

(c) with respect to the school and public employees' retirement plan, a member or the status of a member who meets the minimum membership service requirement of [section 15].

~~(51)~~(52) "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 34. Section 19-2-401, MCA, is amended to read:

"19-2-401. Location of board -- jurisdiction and venue for judicial review -- quorum -- officers and employees. (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.

(2) A quorum of the board is ~~four~~ five members.

(3) The board shall elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in the administration of the systems in accordance with the provisions of Title 19, chapters 2, 3, 5 through 9, 13, 17, and 50, and [sections 1 through 23]

of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board."

Section 35. 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 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:

(a) the defined contribution plan for plan members as provided in Title 19, chapter 3, part 21, of this title;
and

(b) the school and public employees' retirement plan for plan members as provided for in [sections 1 through 23]."

Section 36. Section 19-2-405, MCA, is amended to read:

"19-2-405. Employment of actuary -- biennial investigation and valuation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make a biennial actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement

system's defined benefit plan, the actuary shall take into account:

(i) the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203; and

(ii) the employer contributions for the excess unfunded actuarial liability, as defined in [section 2], to be made pursuant to [section 11].

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter."

Section 37. Section 19-2-407, MCA, is amended to read:

"19-2-407. Report by board to governor. As soon as practical after the close of each fiscal year, the board shall file with the governor a report of its work for that fiscal year. The report must include:

(1) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments. ~~The report must include;~~

(2) the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of each system or plan. ~~The report must also provide;~~

(3) information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, and determinations on the plan choice rate made pursuant to 19-3-2121;

(4) information concerning the school and public employees' retirement plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, and progress toward paying off the unfunded actuarial liabilities pursuant to [section 11]; and

(5) other information required under applicable governmental accounting standards and as determined by the board."

Section 38. Section 19-2-408, MCA, is amended to read:

"19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

- (a) expenditures to purchase intangible assets for plan administration;
- (b) expenses of the defined contribution plan or the school and public employees' retirement plan; or
- (c) expenditures of funds allocated under 19-3-112(1)(b) to the education fund established in 19-3-112(1)(a).

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan.

(5) The administrative expenses of the school and public employees' retirement plan must be paid, as provided in [section 6], from assets of the school and public employees' retirement plan."

Section 39. Section 19-2-409, MCA, is amended to read:

"19-2-409. Plans to be funded on actuarially sound basis -- definition. As required by Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For purposes of this section, "actuarially sound basis" means that contributions to each retirement plan must be sufficient to pay the full actuarial cost of the plan. For a defined benefit plan, the full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years. For the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member. For the school and public employees' retirement plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member."

Section 40. Section 19-2-502, MCA, is amended to read:

"19-2-502. Payments from pension trust funds. (1) The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of Title 19, chapters 2, 3, 5 through 9, and 13 and [sections 1 through 23] ~~of this title~~.

(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership."

Section 41. Section 19-2-503, MCA, is amended to read:

"19-2-503. Management of pension trust funds. The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by the board as provided in this chapter.

(3) Except as provided in Title 19, chapter 3, part 21, and [sections 1 through 23] ~~of this title~~, the state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds."

Section 42. Section 19-2-504, MCA, is amended to read:

"19-2-504. Investment of pension trust funds. (1) Except as provided in Title 19, chapter 3, part 21, and [sections 1 through 23] ~~of this title~~, the pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into the appropriate pension trust funds as received.

(3) The pension trust funds may be commingled for investment purposes, but separate accounts must be maintained for each system."

Section 43. Section 19-2-505, MCA, is amended to read:

"19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems, including the assets of retirement accounts, may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

(5) This section does not prevent the administration of an investment alternative within the defined contribution plan or the school and public employees' retirement plan to the same extent that all other investment alternatives within the defined contribution plan or the school and public employees' retirement plan are managed."

Section 44. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in [sections 1 through 23] or this section, any member who has terminated service, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who has terminated service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written application being filed by the member.

(3) A nonvested member who has terminated service with accumulated contributions of \$200 to \$5,000

must be paid the accumulated contributions in a lump sum as soon as administratively feasible, unless a written application is filed pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of \$200 or more under 19-2-907, ~~or 19-2-909~~, or [section 22] or by a member who is terminating service and is eligible to receive a refund of \$200 or more of accumulated contributions, the board shall make a direct rollover distribution as allowed under ~~Internal Revenue Code~~ section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account not eligible for direct rollover distribution must be paid directly to the recipient."

Section 45. Section 19-2-902, MCA, is amended to read:

"19-2-902. Payment of benefits. (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, other than a benefit under the defined contribution plan or the school and public employees' retirement plan, must be payable in monthly installments, except as provided in this part.

(2) If the total actuarial present value of a benefit payable to a member or beneficiary is equal to or less than \$5,000, the board shall pay the present value of the benefit to the member or beneficiary in a single lump sum unless the member or beneficiary chooses to receive a monthly benefit. The lump sum must be paid at the time the initial monthly benefit would otherwise be payable. An election to receive a monthly benefit must be made at least 30 days prior to the first payment date.

(3) If a benefit recipient dies before the last day of the month, a smaller pro rata amount otherwise payable to the payment recipient must be paid to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate."

Section 46. 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, or [sections 1 through 23].

(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) 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 or the school and public employees' retirement 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 be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments 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 participant in a defined benefit plan, or a defined contribution plan, or the school and public employees' retirement 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 47. Section 19-2-908, MCA, is amended to read:

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

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

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service 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 employment.

(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 and the school and public employees' retirement 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 48. 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, and [sections 1 through 23] 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, or [sections 1 through 23].

(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) 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 and the school and public employees' retirement 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 be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments 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 participant in a defined benefit plan, or a defined contribution plan, or the school and public employees' retirement 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 49. Section 19-2-1004, MCA, is amended to read:

"19-2-1004. Exemption from taxes and legal process. Except as provided in 19-2-907 and 19-2-909, the right of a person to any benefit or payment from a retirement system or plan and the money in the system or plan's pension trust fund is not:

- (1) subject to execution, garnishment, attachment, or any other process;
- (2) subject to state, county, or municipal taxes except for:
 - (a) a benefit or annuity received in excess of ~~\$3,600~~ or adjusted by an the amount determined pursuant to 15-30-111(2)(c)(ii); or
 - (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, ~~or~~ 19-13-601, or [section 9]; or
 - (3) assignable except as specifically provided in this chapter."

Section 50. Section 19-3-401, MCA, is amended to read:

"19-3-401. Membership -- inactive vested members -- inactive nonvested members. (1) Except as provided in subsection (6) and 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) An inactive member of the defined benefit plan with at least 5 years of membership service 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.

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

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

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

accumulated contributions.

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

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

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

(5) ~~Time~~ The 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 retirement benefits.

(6) (a) Beginning on [the effective date of this section], each person who would have become a member of the retirement plan prior to [the effective date of this section] if the person's covered employment had begun prior to [the effective date of this section] becomes a member of the school and public employees' retirement plan provided for in [sections 1 through 23].

(b) Subsection (6)(a) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the public employees' retirement system."

Section 51. Section 19-3-2111, MCA, is amended to read:

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

Except as otherwise provided in this part:

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

(ii) a member who was an inactive member of the defined benefit plan on the 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 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 and prior to [the effective date of this section] 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 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 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~~ Subject to the provisions of [section 8], the provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

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

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

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

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

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

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

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

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

(3) advise the board concerning the operation of the school and public employees' retirement plan, including the selection of the initial investment alternatives to be provided pursuant to [section 18]; and

~~(3)~~(4) review existing deferred compensation plans and to advise the board on the administration of the program."

Section 53. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) ~~Unless~~ Except as provided in subsection (8) and unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

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

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

(c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction; and

(f) a person elected to the office of county superintendent of schools.

(2) (a) (i) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, and before [the effective date of this section] is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become or to not become an active

member of the teachers' retirement system.

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

(b) (i) Subject to subsection (2)(b)(ii), on or after [the effective date of this section], a person elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools may elect to become or to not become an active member of the school and public employees' retirement plan provided for in [sections 1 through 23].

(ii) If a person elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools is a member, as defined in 19-2-303, of a retirement system or plan provided for in this title, the person may elect to become or to not become an active member of the retirement system or plan of which the person is a member. The option provided for under this subsection (2)(b)(ii) is in addition to the option provided for under subsection (2)(b)(i).

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

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

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) Prior to [the effective date of this section], the following provisions apply:

(i) A substitute teacher or a part-time teacher's aide:

(i)(A) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(i)(B) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i)(A).

(ii) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(iii) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i)(A) on the first day of employment as a substitute in the next school year after July 1, 1999.

~~(d)~~(iv) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i)(A) on the first day of employment as a part-time teacher's aide after July 1, 2001.

~~(e)~~(v) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i)(A).

~~(f)~~(vi) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(b) On and after [the effective date of this section], the following provisions apply:

(i) A substitute teacher or a part-time teacher's aide:

(A) shall file an irrevocable written election determining whether to become an active member of the school and public employees' retirement plan on the first day of employment; or

(B) is required to become an active member of the plan after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(b)(i)(A).

(ii) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(iii) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(b)(i).

(iv) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

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

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

(8) (a) Beginning on [the effective date of this section], a person who would have become a member of the retirement plan prior to [the effective date of this section] if the person's covered employment had begun prior to [the effective date of this section] becomes a member of the school and public employees' retirement plan provided for in [sections 1 through 23].

(b) Subsection (8)(a) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the teachers' retirement system."

Section 54. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1)(a) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system, ~~or the public employees' retirement system, or the school and public employees' retirement plan~~ or who are covered by unemployment insurance or ~~who~~ are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a).

(b) (i) The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6.

(ii) The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316.

(iii) The district's or the cooperative's contribution for each employee who is a member of the school and public employees' retirement plan must be calculated in accordance with [sections 1 through 23].

(c) The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation.

(d) The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

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

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

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are

provided to the employee, are paid from the cooperative's interlocal agreement fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

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

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

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

(3) The trustees of a district required to make a contribution to a system or plan referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems or plans in accordance with the financial administration provisions of this title.

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

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

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

(ii) oil and natural gas production taxes;

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

(iv) countywide school retirement block grants distributed under 20-9-631;

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

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

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

(5) The county superintendent shall:

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

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

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

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

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

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

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

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

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

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement

obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction."

Section 55. Section 20-15-404, MCA, is amended to read:

"20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

(1) the teachers' retirement provisions of Title 19, chapter 20, regarding the teachers' retirement system and the provisions of [sections 1 through 23] regarding the school and public employees' retirement plan;

(2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;

(3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;

(4) the adult education provisions of Title 20, chapter 7, part 7;

(5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;

(6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, and 20-9-461 through 20-9-465;

(7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;

(8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;

(9) the school elections provisions of Title 20, chapter 20;

(10) the students' rights provisions of 20-25-511 through 20-25-516; and

(11) the health provisions of 50-1-206."

Section 56. 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;

(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, and [sections 1 through 23] 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 57. Appropriation. There is appropriated \$1 million from the general fund to the public employees' retirement board to pay the startup costs of the school and public employees' retirement plan. The appropriation is for the biennium beginning July 1, 2007, and ending June 30, 2009.

NEW SECTION. Section 58. Codification instruction. [Sections 1 through 23] are intended to be codified as an integral part of Title 19, and the provisions of Title 19 apply to [sections 1 through 23].

NEW SECTION. Section 59. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 60. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 61. Contract of employment -- applicability. Contract rights of employment are not applicable with regard to the right to participation in the school and public employees' retirement plan until the plan is effective. Contract rights of employment are not applicable with regard to rights in the school and public employees' retirement plan until membership in the school and public employees' retirement plan is established.

NEW SECTION. Section 62. Contingent voidness. If the school and public employees' retirement plan cannot be implemented because of an unfavorable determination or ruling from the internal revenue service, then [this act] is void.

NEW SECTION. Section 63. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 6, 27, 28, 45, and 57] are effective July 1, 2007.

(3) [Sections 1 through 5, 8 through 17, 18(4) through (6), 19 through 22, and 29 through 56] are effective on July 1 immediately following the certification required in [section 23] that the school and public employees' retirement plan constitutes a governmental plan qualified pursuant to section 401(a) of the Internal Revenue Code.

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