

HOUSE BILL NO. 679  
INTRODUCED BY W. STAHL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN STATE AND LOCAL GOVERNMENT EMPLOYEES, BEGINNING JULY 1, 2010, TO BE MEMBERS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN WITHIN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; FREEZING THE MEMBERSHIP OF CERTAIN DEFINED BENEFIT RETIREMENT PLANS AS OF JUNE 30, 2010; ESTABLISHING DEFINED CONTRIBUTION RETIREMENT PLAN CONTRIBUTION REQUIREMENTS AND OPTIONS FOR CERTAIN PUBLIC EMPLOYEES; ESTABLISHING DEFINED CONTRIBUTION RETIREMENT PLAN CONTRIBUTIONS REQUIREMENTS FOR CERTAIN PUBLIC EMPLOYERS; PROVIDING FOR THE TRANSITION BY EMPLOYERS AND EMPLOYEES FROM CERTAIN DEFINED BENEFIT RETIREMENT PLANS TO THE DEFINED CONTRIBUTION RETIREMENT PLAN WITHIN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; PROVIDING AN APPROPRIATION; REQUIRING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO SEEK A RULING OR OPINION; AMENDING SECTIONS 2-15-1009, 2-18-704, 17-7-502, 19-2-303, 19-2-405, 19-2-407, 19-2-704, 19-3-315, 19-3-316, 19-3-401, 19-3-412, 19-3-2101, 19-3-2102, 19-3-2106, 19-3-2111, 19-3-2112, 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2121, 19-3-2141, 19-3-2143, 19-5-301, 19-6-301, 19-7-301, 19-7-302, 19-8-301, 19-8-302, 19-9-301, 19-13-301, 19-20-101, 19-20-302, 20-9-501, AND 20-15-404, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES."

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

NEW SECTION. **Section 1. Member contributions.** (1) Each member:

(a) shall contribute 6.9% of the member's compensation; and  
(b) may contribute an additional amount of the member's compensation that will not, when combined with the amount required to be contributed under subsection (1)(a), exceed the maximum amount allowed under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c).

(2) The employer's payment of salary or wages less the contribution required in subsection (1)(a) 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 this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code, 26 U.S.C. 414(h)(2),

shall pick up and pay the contributions that would be payable by the member under subsection (1)(a).

(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 19-3-2117(1).

(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 under subsection (1)(a) and remit the total of the contributions to the board.

**NEW SECTION. Section 2. Employer contributions.** (1) Each employer shall contribute to the plan 6.9% of each member's compensation for each of the employer's employees who became plan members on or after [the applicability date of this section] except those properly excluded from membership.

(2) Employer contributions determined under subsection (1) must be allocated as provided in 19-3-2117(2)(b).

(3) If in any fiscal year the total amount of all employers' contributions paid under subsection (1) exceeds the total amount of all employers' contributions allocated to members' accounts, 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 unfunded actuarial liabilities determined under [section 6] in shares proportionate to the unfunded actuarial liabilities of each of the defined benefit plans by transferring the money to the appropriate fund.

**NEW SECTION. Section 3. Plan transition contributions.** (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 unfunded actuarial liabilities determined under [section 6] resulting from the transition to the defined contribution plan as the only retirement plan available to future public employees, except those properly excluded from membership, and shall adopt schedules by which the unfunded actuarial liabilities of each defined benefit plan provided for in this title on [the effective date of this section] and determined under [section 6] must be paid. The duration of time within which the unfunded actuarial liabilities must be paid in full under the schedules may not be more than 30 years.

(2) (a) Except as provided in subsection (2)(b), based on the schedules adopted under subsection (1),

the board shall determine annually the amount to be paid as plan transition contributions by each employer during the ensuing year. The board shall calculate the percentage of compensation of each of the employers' employees needed to pay the amount determined from the schedules and shall notify each employer of the percentage amount before March 1 of each year.

(b) The amount to be paid by each employer for the fiscal year that begins [the applicability date of this section] is one-thirtieth of the amount of the unfunded actuarial liability reported in the actuarial valuation most recently completed prior to [the effective date of this section] multiplied by the ratio that the number of the employers' employees who are members of the defined benefit plan on [the effective date of this section] bears to the total number of employees who are members of that defined benefit plan on [the effective date of this section]. For the purposes of this subsection (2)(b), employees who are members of the defined contribution plan prior to [the effective date of this section] may not be included in either the numerator or denominator of the ratio.

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

(b) The amounts paid to the board under this subsection (3) must be deposited to the appropriate retirement trust funds for the single purpose of paying off the unfunded actuarial liabilities.

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

**NEW SECTION. Section 4. 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 share of the costs of this part 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 share of the costs of this part 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 5. 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 6. Determination of unfunded actuarial liability -- allocations.** (1) For the purposes of this section, "defined benefit plan" means the defined benefit plans provided for in Title 19, chapters 3, 5 through 9, 13, and 20, as applicable.

(2) Each year, the board shall determine for each defined benefit plan, as of the most recently completed actuarial valuation of the defined benefit plan, the share of the unfunded actuarial liability attributable to the individuals assumed by the actuary to be current and future members of the defined contribution plan whose membership in the defined contribution plan represents a portion of the unfunded actuarial liability of the defined benefit plan. For the purposes of this subsection, members who were members of the defined contribution plan before [the applicability date of this section] are not considered to be current and future members.

(3) Based on the amount determined under subsection (2), each year the board shall determine the amount of the unfunded liability that must be paid each fiscal year to maintain the actuarial soundness of the defined benefit plan.

**NEW SECTION. Section 7. Implementation team -- state agency assistance.** The board shall create an implementation team to assist in the transition from the defined benefit plans to the defined contribution plan. Upon request of the board, other state agencies may provide technical and professional assistance to support the implementation of the transition to the defined contribution 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 in supporting the board pursuant to this section.

**NEW SECTION. Section 8. Payment of local government and school administration expenses.** To the extent that a local government unit, including a school district or community college district, is required to incur administrative expenses to transition from an existing defined benefit plan to the defined contribution plan, the expenses must be paid by the public employees' retirement board from the appropriation provided in [section 46].

**NEW SECTION. Section 9. Loan authorized -- repayment -- statutory appropriation.** (1) If the administrative costs of implementing [this act] prior to July 1, 2011, exceed the appropriation provided in [section 46], the board is authorized to take a loan from the department of administration. The department of administration 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 administrative costs of implementing [this act] prior to July 1, 2011, including the costs incurred under [section 8].

(3) If the board has insufficient funds to repay the loan before July 1, 2011, the money for repayment of the loan is statutorily appropriated from the general fund, as provided in 17-7-502.

**Section 10.** 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 with the consent of the senate. The members are:

(a) ~~three~~ four public employees who are active members of a public retirement system. Not more than one of these members may be an employee of the same department and at least ~~one~~ two of these members must, no later than ~~July 1, 2003~~ [the applicability date of this section], be ~~a member~~ members of the defined contribution plan created pursuant to Title 19, chapter 3, part 21.

(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 11.** 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, a member with at least 5 years of service and who is at least age 50 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 or by a district court judge, supreme court justice, or chief water judge, provided for in 3-7-221, who is a member of the defined contribution plan provided for in Title 19, chapter 3, part 21, who leaves judicial office but continues to be an inactive vested member of the judges' retirement system or the defined contribution plan as provided by 19-5-301 or 19-3-2111. 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.

(9) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (9)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (9).

(d) For purposes of this subsection (9):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (9)(b) and delivered by a physician or a health care professional supervised by a physician.

(10) (a) Except as provided in subsection (10)(b), upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must, as provided in 33-22-152, continue to provide coverage for any unmarried dependent, as defined in 33-22-140(5)(b), until the dependent reaches 25 years of age or marries, whichever occurs first. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in 33-22-140(5)(b), may be required to be paid by the insured and not by the employer.

(b) An insurance contract or plan issued under this part for the state employee group insurance program and the university system group insurance program is not subject to subsection (10)(a).

(11) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan



member."

**Section 12.** 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; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 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; [section 9]; 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; 19-20-607; 19-21-203; 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; 76-13-150; 77-1-108; 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 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. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

**Section 13.** Section 19-2-303, MCA, is amended to read:

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

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

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

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

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

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

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

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

(8) "Annuity" means:

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

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

(9) "Benefit" means:

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

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

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

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

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

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

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

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

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

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

~~(25)~~(26) "Internal Revenue Code" has the meaning provided in 15-30-101.

~~(26)~~(27) (a) "Member" means either:

~~(a)~~(i) a person with accumulated contributions and service credited with a defined benefit retirement plan prior to [the applicability date of this section] or receiving a retirement benefit on account of the person's previous service credited in a retirement system prior to [the applicability date of this section]; or

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

(b) The term does not include a person who is initially hired into covered employment on or after [the applicability date of this section] or who initially assumes an elected office on or after [the applicability date of this section] for which membership is required or optional.

~~(27)~~(28) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(28)~~(29) (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)~~(30) "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)~~(31) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

~~(31)~~(32) "Pension trust fund" means a fund established to hold the contributions, income, and assets of

a retirement system or plan in public trust.

~~(32)~~(33) "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(2)(a) 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.

~~(34)~~ "Plan transition rate" means the amount of the employer contribution as a percentage of payroll covered by the applicable members of the defined benefit plans provided for in this title that is allocated to the appropriate retirement system's defined benefit plan pursuant to 19-3-2117(2)(b) and that is adjusted by the board pursuant to [sections 3 and 6] to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from members required to become members of the defined contribution plan on and after [the applicability date of this section].

~~(33)~~(35) "Regular contributions" means contributions required from members under a retirement plan.

~~(34)~~(36) "Regular interest" means interest at rates set from time to time by the board.

~~(35)~~(37) "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)~~(38) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

~~(37)~~(39) "Retirement benefit" means:

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

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

~~(38)~~(40) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

~~(39)~~(41) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(40)~~(42) "Service" means employment of an employee in a position covered by a retirement system.

~~(41)~~(43) "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)~~(44) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

~~(43)~~(45) "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)~~(46) "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)~~(47) "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)~~(48) "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)~~(49) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

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

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

(c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection ~~(47)~~ (49), 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)~~(50) "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)~~(51) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a vested 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)~~(52) "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(1) or (2), as applicable.

~~(54)~~(53) "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 14.** Section 19-2-405, MCA, is amended to read:

**"19-2-405. Employment of actuary -- annual 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 adviser of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make an annual 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(2)(a) and 19-21-203;

(ii) the plan transition rate contributions to be made to the defined benefit plan pursuant to 19-3-2117(2)(b).

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans. Copies of the report must be provided to the legislature pursuant to 5-11-210.

(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 15.** Section 19-2-407, MCA, is amended to read:

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

(a) 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;

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

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

(d) any changes in the amortization period of the unfunded actuarial liability and the unfunded actuarial liability, if any, of each system or plan; and

(e) the anticipated change in each of the ensuing 2 years in the unfunded actuarial liability, if any, of each system or plan and in the plan transition rate for each system or plan.

(2) The report required under subsection (1) must also provide 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, determinations on the plan choice rate made pursuant to 19-3-2121, and other information required under applicable governmental accounting standards and as determined by the board."



**Section 16.** Section 19-2-704, MCA, is amended to read:

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

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

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

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

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

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

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

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

before the deduction is made.

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

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

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

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

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction, except when a member with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to ~~19-3-2111(7)~~ 19-3-2111(10) or to the optional retirement program pursuant to 19-3-2112(2)(j).

(7) If a member terminates employment or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid unless further payment is made as provided in this subsection. In the case of a termination from employment, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code, 26 U.S.C. 415. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code, 26 U.S.C. 415."

**Section 17.** Section 19-3-315, MCA, is amended to read:

**"19-3-315. Member's contribution to be deducted.** (1) Each member's contribution is 6.9% of the member's compensation.

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the ~~federal~~ Internal Revenue Code of 1954, ~~as amended and applicable on July 1, 1985,~~ 26 U.S.C. 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan:

(i) who was a member of the defined contribution plan before [the applicability date of this section] or who elects to become a member of the defined contribution plan after [the applicability date of this section], these contributions must be allocated as provided in 19-3-2117(2)(a); or

(ii) who is not a member included under subsection (4)(c)(i), these contributions must be allocated as provided in 19-3-2117(2)(b).

(5) The member's contributions picked up by the employer must be payable 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."

**Section 18.** Section 19-3-316, MCA, is amended to read:

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

(a) who were members before [the applicability date of this section] or who elected to become members of the defined contribution plan after [the applicability date of this section] must be allocated as provided in 19-3-2117(2)(a); and

(b) who are not members included under subsection (1)(a) must be allocated as provided in 19-3-2117(2)(b).

(2) ~~Local~~ For employees who were members of the system before [the applicability date of this section], local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rates under 19-3-319.

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

~~— (a) beginning July 1, 2007, 0.135%; and~~

~~— (b) beginning July 1, 2009, 0.27%.~~

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

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

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

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

**Section 19.** 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 ~~must~~ 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 or a public institution of higher education is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits.

(6) (a) Each person initially hired on or after [the applicability date of this section] becomes a member of the defined contribution plan.

(b) Subsection (6)(a) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of a defined benefit plan provided for in Title 19, the defined contribution plan provided for in Title 19, chapter 3, part 21, the teachers' retirement system provided for in Title 19, chapter 20, or the optional retirement program provided for in Title 19, chapter 21."

**Section 20.** Section 19-3-412, MCA, is amended to read:

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

(a) elected officials of the state or local governments, including individuals appointed to fill the unexpired

term of elected officials, who:

- (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or
- (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;
- (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;
- (c) employees directly appointed by the governor;
- (d) employees working 10 months or less for the legislative branch to perform work related to the legislative session;
- (e) the chief administrative officer of any city or county;
- (f) employees of county hospitals or rest homes.

(2) A member who is elected to and, prior to [the applicability date of this section], who assumes a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) An individual initially hired or initially elected or appointed to an office described in subsections (1)(a) through (1)(f) or (2) on or after [the applicability date of this section] shall elect either to become an active member of the defined contribution retirement plan provided for in Title 19, chapter 3, part 21, or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (4).

~~(3)~~(4) (a) The board shall prescribe the form of the written application required pursuant to ~~subsection~~ subsections (1) through (3) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under ~~subsection~~ subsections (1) through (3) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board:

(i) for an employee described in subsection (1)(d), within 300 days of the commencement of the employee's employment; and

(ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 180 days of the commencement of the employee's or elected official's employment.

(d) For elected officials and employees subject to subsection (3), the time within which the written application must be filed with the board is the same as if the elected official or employee was filing under subsection (1) or (2).

~~(d)~~(e) The employer shall retain a copy of the employee's or elected official's written application.

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

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

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

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

- (a) a member who was an active member before the employment remains an active member;
- (b) a member who was an inactive member before the employment becomes an active member; and
- (c) a member who was a retired member before the employment is subject to part 11 of this chapter.

~~(8)~~(9) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

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

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

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

**Section 21.** Section 19-3-2101, MCA, is amended to read:

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

(1) "Additional contributions" means contributions made by a member of the plan to purchase various types of optional service credit or to augment the member's own contributions as allowed by the plan pursuant

to [section 1(1)(b)].

(2) "Benefits" means payments or distribution under the plan for the exclusive benefit of a member or the member's beneficiary or an annuity purchased under 19-3-2123 or 19-3-2124.

(3) (a) "Compensation":

(i) for a judge of a district court, a justice of the supreme court, and the chief water judge, provided for in 3-7-221, means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, as applicable, paid to the member;

(ii) for a covered employee who is not included under subsection (3)(a)(i), means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made, but does not include maintenance, allowances, and expenses.

(b) Compensation does not mean or include any kind of payment, reimbursement, coverage, or the like for anything described in 19-20-101(7)(b) through (7)(e).

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

(5) "Defined benefit plan" means a defined benefit retirement plan under one of the public employee retirement plans enumerated in 19-2-302 or the defined benefit retirement plan of the teachers' retirement system provided for in Title 19, chapter 20.

(6) (a) "Employer" means a governmental agency participating in the defined contribution 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 one of those entities is identified as being responsible for paying retirement contributions pursuant to an interlocal agreement under Title 7, chapter 11, part 1.

(b) A governmental entity that may otherwise be an employer for the purposes of subsection (6)(a) is not an employer under this part for employees who are, on [the applicability date of this section], members of any defined benefit plan provided for in Title 19, chapters 3, 5 through 9, and 13 or a retirement plan provided for in Title 19, chapter 20 or 21.

(1)(7) "Member" means a person with a retirement account in the defined contribution plan.

(2)(8) "Optional retirement program" means the retirement plan established by the board of regents



under Title 19, chapter 21 of this title.

(9) "PERS defined benefit plan" means the defined benefit plan as defined in 19-3-108 and generally governed by Title 19, chapter 3, parts 1 through 5, 9 through 12, 15, and 16.

~~(3)~~(10) "Plan" or "defined contribution plan" means the defined contribution retirement plan.

(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."

**Section 22.** Section 19-3-2102, MCA, is amended to read:

**"19-3-2102. Defined contribution plan established -- assets to be held in trust -- contracted services.** (1) The board shall establish within the public employees' retirement system a defined contribution plan in accordance with the provisions of this part. The plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a "qualified governmental plan" pursuant to section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a), and its implementing regulations. ~~Retirement accounts~~ A retirement account must be established for each member of the defined contribution 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 and is encouraged to the maximum extent practicable to contract for plan administration and use a competitive bidding process when contracting for consulting, educational, investment, recordkeeping, ~~or~~ and all other services for the plan."

**Section 23.** Section 19-3-2106, MCA, is amended to read:

**"19-3-2106. Limited contract right.** ~~The~~ (1) Except as provided in subsection (2), the statutory provisions governing the defined contribution plan and the optional retirement program are subject to amendment by the legislature. Employees choosing the defined contribution plan or the optional retirement program pursuant to this part or who otherwise are members of the plan do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice or membership in the plan becomes effective.

(2) A member has a contract right only to the contributions and earnings under the vesting provisions of 19-3-2116."

**Section 24.** Section 19-3-2111, MCA, is amended to read:

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

(1) (a) Except as otherwise provided in this part, each employee initially hired by a covered employer on or after [the applicability date of this section] becomes a member of the defined contribution 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 defined contribution plan as the board may require.

(b) Unless otherwise provided for in this title, a member of the defined contribution plan may not simultaneously be a member of the plan and of a defined benefit plan. A period of service may not be credited in more than one retirement plan under this title.

(2) The provisions of this part 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 defined contribution plan or of a defined benefit plan who becomes inactive after [the applicability 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)~~(4) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the PERS defined benefit plan on ~~the date that the defined contribution plan becomes effective~~ [the applicability date of this section] and has not previously made an election required by this section may, within ~~12 months after that date~~ the 12-month period provided for in subsection (5)(a), elect to transfer to and become a member of the defined contribution 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 PERS defined benefit plan on ~~the date that the defined contribution plan becomes effective~~ [the applicability date of this section], who has not previously made an election required by this section, and who is rehired into covered employment after ~~the plan effective date~~ [the applicability date of this section] may, within the 12-month period provided for in subsection ~~(2)(a)~~ (5)(a), elect to transfer to and become a member of the defined contribution plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(b) a ~~member~~ person who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective and before [the applicability date of this section] may, within the 12-month period provided for in subsection ~~(2)(a)~~ (5)(a), elect to become a member of the plan regardless of whether the

member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

~~(2)~~(5) (a) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

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

(c) An election under this section, including the default election pursuant to subsection ~~(2)(b)~~ (5)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection ~~(2)(c)~~ (5)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

~~(3)~~(6) A member in either the PERS defined benefit plan or the defined contribution plan who becomes and remains an inactive member after an election under this section and who returns to active membership remains in the plan previously elected.

~~(4)~~(7) A ~~system~~ member may not simultaneously be a member of the PERS defined benefit plan and the defined contribution plan and must be a member of either the PERS 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~~ Title 19, chapter 3.

~~(5)~~(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)~~(9) A member of the PERS defined benefit plan who is subject to a family law order pursuant to 19-2-907 or 19-20-305 or an execution or income-withholding order pursuant to 19-2-909 or 19-20-306 may not transfer to the PERS defined contribution plan unless the order is modified to apply under the defined contribution plan.

~~(7)~~(10) (a) A member of the PERS 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, 26 U.S.C. 415. 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 25.** Section 19-3-2112, MCA, is amended to read:

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

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

(a) (i) A member employed by the university system who is an active member of the PERS defined benefit plan on ~~the effective date of the defined contribution plan~~ [the applicability date of this section] and who has not previously made an election required by this section may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the optional retirement program 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 PERS defined benefit plan on ~~the effective date of the defined contribution plan~~ [the applicability date of this section], who has not previously made an election required by this section, and who is hired or rehired into covered employment with the university system after ~~that date July 1, 2002~~, may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after ~~the effective date of the defined contribution plan~~ July 1, 2002, and before [the applicability date of this section] and who has not previously made an election required by this section may, within the 12-month period provided for in subsection (2)(b), elect to become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

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

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

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

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

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under Title 19, chapters 3 and 21 of this title, but must be a member of the PERS defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

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

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

(i) A member of the PERS defined benefit plan who is subject to a family law order pursuant to 19-2-907 or 19-20-305 or an execution or income-withholding order pursuant to 19-2-909 or 19-20-306 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

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

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section

415 of the Internal Revenue Code, 26 U.S.C. 415. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

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

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

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

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

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

(b) A member who became a member prior to [the applicability date of this section] and who terminated membership in the PERS defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111~~(1)(b)~~(4)(b).

(2) (a) An employee who became a member prior to [the applicability date of this section] and who returns to covered employment after terminating membership in the PERS defined benefit plan, who is eligible to make a plan choice, and who elects to join the PERS defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who became a member prior to [the applicability date of this section] and who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the PERS defined benefit plan pursuant

to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the PERS defined benefit plan. The member may not purchase membership service and service credit under this section in excess of the member's length of service in the defined contribution plan or the optional retirement program."

**Section 27.** Section 19-3-2114, MCA, is amended to read:

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

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

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

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

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

(2) For an employee hired on or after ~~the effective date of the defined contribution plan~~ July 1, 2002, and prior to [the applicability date of this section] who elects to become a member of the plan, the board shall transfer from the PERS defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117(2)(a) had the employee become a plan member on the employee's hire date, plus 8% compounded annual interest from the month that the

contributions were received.

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

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

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

**Section 28.** Section 19-3-2115, MCA, is amended to read:

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

(b) To transfer service credit from another retirement system in this title, an employee must be a member of the PERS defined benefit plan. The member must receive membership service and service credit for the service the member transfers. The transferring member may, within 12 months after joining the defined benefit plan, elect to become a member of the PERS defined contribution plan. The transferred service credit may be used for purposes of vesting in the defined contribution plan pursuant to 19-3-2116(2).

(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."

**Section 29.** Section 19-3-2116, MCA, is amended to read:

**"19-3-2116. 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 2] 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 system.

(b) Employer contributions made pursuant to [section 3] 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 19-3-2115 and income on those contributions and is vested from the date that the contribution is credited to the account.

(4) A member who terminates service after becoming a vested member may terminate plan membership as provided in 19-3-2123 and subject to 19-3-2126.

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

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

**Section 30.** Section 19-3-2117, MCA, is amended to read:

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

(2) Subject to adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 or [section 2], as applicable, received:

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

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

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

(a) if the member was a member before [the applicability date of this section]:

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

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

~~(iv)(iii)~~ 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141(6)(a); and

(iv) the amount allocated under 19-3-316 minus the sum of the percentages prescribed in subsections (2)(a)(i) through (2)(a)(iii) of this section must be allocated to the member's retirement account;

(b) if the member became a member on or after [the applicability date of this section];

(i) the percentage of compensation determined under [section 3(2)] must be allocated to the appropriate defined benefit plan as the plan transition rate;

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

(iii) 0.3% of compensation must be allocated to the long-term disability insurance plan for which the board is required to contract pursuant to 19-3-2141(6)(b); and

(iv) the amount allocated under [section 2(1)] minus the sum of the percentages prescribed in subsections (2)(b)(i) through (2)(b)(iii) of this section must be allocated to the member's retirement account; and

(b)(c) on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions required pursuant to 19-3-316(3) terminate pursuant to 19-3-316(4), 0.27% of compensation must be allocated in the following order:

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

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

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

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

(b) The board shall allocate the forfeitures under ~~19-3-2116~~ this section in the following order:

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

(ii) if forfeited funds remain and if any unfunded actuarial liability determined under [section 6] remains to be paid, to pay the unfunded actuarial liability determined in [section 6] of the applicable defined benefit plan if identifiable by the board or, if the board is unable to identify the applicable defined benefit plan, then proportionately to all of the defined benefit plans."

**Section 31.** Section 19-3-2121, MCA, is amended to read:

**"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations. (1)**

The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2)(b)(2)(a)(i) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the PERS defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the PERS defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the PERS defined benefit plan that would have resulted if all system members remained in the PERS defined benefit plan and the normal cost contribution rate in the PERS defined benefit plan for the actual members of the PERS defined benefit plan, multiplied by the compensation paid to all of the members in the PERS defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan. The measurements under this subsection must be based on the PERS defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the PERS defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the PERS defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the PERS defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the PERS defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the PERS defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the PERS defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2)(a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice

rate under 19-3-2117(2)(b)(2)(a)(i) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a)(iv) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a)(iv) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under 19-3-2117(2)(d)(2)(a)(iii) should be increased, the employer contribution to each member's account under 19-3-2117(2)(a)(iv) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117(2)(d)(2)(a)(iii) should be decreased, the employer contribution to each member's account under 19-3-2117(2)(a)(iv) must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2)(a) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2)(a) must be adjusted according to the board's determination."

**Section 32.** Section 19-3-2141, MCA, is amended to read:

**"19-3-2141. Long-term disability plan -- benefit amount -- eligibility -- administration and rulemaking.** (1) (a) Except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

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

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

(a) the member must be vested in the plan as provided in 19-3-2116(2);

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

(c) if the member's disability occurred after the member reached 60 years of age, the benefit may be paid

for no more than 5 years; and

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

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

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

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

(6) ~~(a) The~~ Except as provided for in 19-3-2143(3), for the members who were members before [the applicability date of this section], the board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the PERS defined benefit plan trust fund.

(b) The board shall enter into a contract for a long-term disability insurance plan that provides the disability benefits described in this section for all members who became members on or after [the applicability date of this section].

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

**Section 33.** Section 19-3-2143, MCA, is amended to read:

**"19-3-2143. Implementation.** (1) ~~To~~ Except as provided in subsection (3), to implement the provisions of 19-3-2141(6)(a) for members who were members of the plan before [the applicability date of this section], the board shall establish a self-insured long-term disability plan through which the disability benefits must be paid.

(2) ~~If the disability plan cannot be implemented as described in subsection (1),~~ For members who became members of the plan on or after [the applicability date of this section], the board shall implement the provisions of 19-3-2141(6)(b) by contracting for long-term disability insurance that provides for the benefits described in 19-3-2141.

(3) If the disability plan required in 19-3-2141(6)(a) cannot be implemented as described in subsection (1) of this section, the board shall implement the provisions of 19-3-2141(6)(a) by contracting for long-term disability insurance that provides for the benefits described in 19-3-2141. A disability plan contracted for pursuant to this subsection may be the same disability plan contracted for pursuant to subsection (2)."

**Section 34.** Section 19-5-301, MCA, is amended to read:

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

(b) A judge or justice who elected in writing to remain under the public employees' retirement system on or before October 1, 1985, remains a member of the public employees' retirement system.

(c) Except as provided in subsection (1)(d), a judge of a district court, a justice of the supreme court, or the chief water judge, provided for in 3-7-221, who initially assumes office on or after [the applicability date of this section] is a member of the defined contribution plan.

(d) A judge of a district court, a justice of the supreme court, or a chief water judge, provided for in 3-7-221, who was a member, retiree, or beneficiary of a retirement system or plan provided for in this title on [the applicability date of this section] remains a member of that retirement system or plan.

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

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

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

**Section 35.** Section 19-6-301, MCA, is amended to read:

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

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

(b) If an inactive vested member 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 with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

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

(4) (a) Each person initially hired on or after [the applicability date of this section] becomes a member of the defined contribution retirement plan.

(b) Subsection (4)(a) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the highway patrol officers' retirement system on [the applicability date of this section]."

**Section 36.** Section 19-7-301, MCA, is amended to read:

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

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, and who has not previously made an election under this section may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

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

(b) An investigator who was a member of the public employees' retirement system on July 1, 1993, and who has not previously made an election under this section may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

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

(b) A detention officer who was a member of the public employees' retirement system on July 1, 2005, and who has not previously made an election under this section may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board before May 1, 2006.

(4) A member of the public employees' retirement system who begins employment in a position covered

by the sheriffs' retirement system before [the applicability date of this section] and who has not previously made an election under this section may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

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

(6) (a) An inactive member 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 retirement benefit under the provisions of this chapter.

(b) If an inactive vested member 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.

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

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

(8) (a) Each person initially hired on or after [the applicability date of this section] who would have become a member of the sheriffs' retirement system becomes a member of the defined contribution retirement plan.

(b) Subsection (8)(a) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the sheriffs' retirement system on [the applicability date of this section]."

**Section 37.** Section 19-7-302, MCA, is amended to read:

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

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

(3) After July 1, 2005, a detention officer is not eligible to become a member of the defined benefit plan within the public employees' retirement system and the provisions of The Public Employees' Retirement System



Act do not apply to detention officers who are members of the sheriffs' retirement system, except as provided in 19-7-301.

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

**Section 38.** Section 19-8-301, MCA, is amended to read:

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

- (a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;
- (b) motor carrier officers employed by the department of transportation;
- (c) campus security officers employed by the university system;
- (d) wardens and deputy wardens employed by the department of corrections;
- (e) corrections officers employed by the department of corrections;
- (f) probation and parole officers employed by the department of corrections;
- (g) stock inspectors and detectives employed by the department of livestock; and
- (h) drill instructors employed by the department of corrections.

(2) (a) Each person initially hired on or after [the applicability date of this section] who would have become a member of the game wardens' and peace officers' retirement system becomes a member of the defined contribution retirement plan.

(b) Subsection (2)(a) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the game wardens' and peace officers' retirement system on [the applicability date of this section].

~~(2)~~(3) (a) An inactive member 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 retirement benefit under the provisions of this chapter.

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

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

**Section 39.** Section 19-8-302, MCA, is amended to read:

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

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

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

(4) (a) Each person initially hired on or after [the applicability date of this section] who would have become a member of the game wardens' and peace officers' retirement system becomes a member of the defined contribution retirement plan.

(b) Subsection (4)(a) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the game wardens' and peace officers' retirement system on [the applicability date of this section]."

**Section 40.** Section 19-9-301, MCA, is amended to read:

**"19-9-301. Active membership -- inactive vested member -- inactive nonvested member.** (1) A Except as provided in subsection (6), a police officer becomes an active member of the retirement system:

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

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

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the

effective date of the election if the police officer is employed by the employer on that date and the employer actually joined the system before [the applicability date of this section]. A person who is a member of the public employees' retirement system prior to [the applicability date of this section] and who remains a member on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing a written election with the board no later than 30 days after the date of the employer's election.

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

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

(4) (a) An inactive member 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 retirement benefit under the provisions of this chapter.

(b) If an inactive vested member 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 contributions.

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

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

(6) (a) Each person initially hired on or after [the applicability date of this section] who would have become a member of the municipal police officers' retirement system becomes a member of the defined contribution retirement plan.

(b) Subsection (6)(a) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the municipal police officers' retirement system on [the applicability date of this section]."

**Section 41.** Section 19-13-301, MCA, is amended to read:

**"19-13-301. Active membership -- inactive vested member -- inactive nonvested member.** (1) Except as provided in ~~subsection~~ subsections (7) and (9), a full-paid firefighter becomes an active member of the retirement system:

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

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

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date and the employer actually joined the system before [the applicability date of this section].

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

(3) A part-paid firefighter:

(a) who was a part-paid firefighter before [the applicability date of this section] may elect to become a member of the retirement system by filing a membership application with the board within 6 months of becoming a part-paid firefighter; or

(b) who became a part-paid firefighter on or after [the applicability date of this section] may elect to become a member of the defined contribution plan provided for in Title 19, chapter 3, part 21, by filing a membership application with the board within 6 months of becoming a part-paid firefighter.

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

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

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

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

(5) (a) An inactive member 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 retirement benefit under the provisions of this chapter.

(b) If an inactive vested member 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.

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

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

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

(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system.

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

(9) (a) Each person initially hired on or after [the applicability date of this section] who would have become a member of the firefighters' unified retirement system becomes a member of the defined contribution retirement plan.

(b) Subsection (9)(a) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the firefighters' unified retirement system on [the applicability date of this section]."

**Section 42.** Section 19-20-101, MCA, is amended to read:

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

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

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

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

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

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

(6) "Defined contribution plan" means the defined contribution retirement plan provided for in Title 19, chapter 3, part 21.

~~(6)~~(7) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

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

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

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

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

~~(7)~~(8) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

~~(8)~~(9) "Full-time service" means service that is at least 180 days in a fiscal year or at least 140 hours a month during 9 months in a fiscal year.

~~(9)~~(10) "Internal Revenue Code" has the meaning provided in 15-30-101.

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

~~(11)~~(12) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

~~(12)~~(13) "Part-time service" means service that is less than full-time. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(13)~~(14) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

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

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

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

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

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

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

~~(20)~~(21) "Termination" or "terminate" means that the member has severed the employment relationship

with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

~~(21)~~(22) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

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

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

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

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

**Section 43.** Section 19-20-302, MCA, is amended to read:

**"19-20-302. Active membership.** (1) ~~(a) Unless~~ Prior to [the applicability date of this section] and unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

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

~~(b)~~(ii) 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)~~(iii) a person employed as a speech-language pathologist, school nurse, paraprofessional who provides instructional support, 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)~~(iv) a person who is an administrative officer or a member of the instructional staff of the board of



public education;

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

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

(b) (i) Beginning [the applicability date of this section], a person who is initially hired into any position or capacity described in subsection (1)(a) and who is not a member of the teachers' retirement system, the optional retirement program, provided for in Title 19, chapter 21, or a defined benefit retirement plan enumerated in 19-2-302 is a member of the defined contribution plan.

(ii) Subsection (1)(b)(i) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the teachers' retirement system on [the applicability date of this section].

(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 applicability date of this section] is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and shall, within 30 days of taking office, file an irrevocable written election 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) Beginning [the applicability date of this section], a retired member who has not previously made and is not otherwise eligible to make an election under this section and who is elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the defined contribution plan.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2)(a) must have been a member prior to [the applicability date of this section] and 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) ~~(i)~~ (i) A Prior to [the applicability date of this section], 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

~~(ii)~~(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).

~~(b)~~(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.

~~(c)~~(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)(a)(i)(A).

~~(d)~~(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.

(b) A person who is initially hired on or after [the applicability date of this section] as a substitute teacher or a part-time teacher's aide:

(i) (A) shall file an irrevocable written election determining whether to become or to not become an active member of the defined contribution plan on the first day of employment; or

(B) is required to become an active member of the defined contribution 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 of the defined contribution plan, 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)(A).

(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.

(v) Subsections (4)(b)(i) through (4)(b)(iv) do not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the teachers' retirement system on [the applicability date of this section].

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

(b) A school district clerk or business official who is a member of the system on July 1, 2001, and who remains a member on [the day before the applicability date of this section] 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.

(c) (i) A person who is initially employed on or after [the applicability date of this section] as a school district clerk or business official is required to become a member of the defined contribution plan.

(ii) Subsection (5)(c)(i) does not affect the rights or responsibilities of a person who is a member, retiree, or beneficiary of the teachers' retirement system on [the applicability date of this section].

(6) At any time that a person's eligibility to become a member of the teachers' 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) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the optional retirement program under Title 19, chapter 21.

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

**Section 44.** Section 20-9-501, MCA, is amended to read:

**"20-9-501. Retirement costs and retirement fund.** (1) 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, 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). 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. 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 or [sections 2 and 3], as applicable. 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. 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 cooperative 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 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 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 45.** 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 Title 19, chapter 3, regarding the defined contribution 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, 20-9-461, 20-9-464, and 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."

NEW SECTION. **Section 46. Appropriation.** There is appropriated from the general fund to the public

employees' retirement board for the biennium beginning July 1, 2009, \$1 million. The only purpose of the appropriation is to pay for the administrative expenses of local governments, including school districts and community college districts, to implement [this act].

NEW SECTION. **Section 47. 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 defined contribution retirement plan of the public employees' retirement system as revised pursuant to [this act] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code.

NEW SECTION. **Section 48. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 19, chapter 3, part 21, and the provisions of Title 19, chapter 3, part 21, apply to [sections 1 through 9].

NEW SECTION. **Section 49. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the applicability date of this act].

NEW SECTION. **Section 50. 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 51. Contract of employment -- applicability.** Contract rights of employment are not applicable with regard to the right to participation in the defined contribution retirement plan of the public employees' retirement system as revised pursuant to [this act] until the provisions of [this act] are effective and applicable as provided in [this act]. Contract rights of employment are not applicable with regard to rights in the defined contribution retirement plan of the public employees' retirement system as revised pursuant to [this act] until the provisions of [this act] are effective and applicable as provided in [this act].

NEW SECTION. **Section 52. Contingent voidness.** If the defined contribution retirement plan of the public employees' retirement system as revised pursuant to [this act] cannot be implemented because of an unfavorable determination or ruling from the internal revenue service, then [this act] is void.

NEW SECTION. **Section 53. Effective date -- applicability.** (1) [This act] is effective July 1, 2009.

(2) (a) Except as provided in subsection (2)(b), [this act] applies to individuals hired on or after July 1, 2009.

(b) [Sections 1 through 5, 10 through 14, and 16 through 45] apply to individuals hired on or after July 1, 2010.

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