

## 1 SENATE BILL NO. 328

2 INTRODUCED BY D. LEWIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21

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

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

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

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

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

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

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

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

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

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

10 (8) "Annuity" means:

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

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

15 (9) "Benefit" means:

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

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

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

22 (11) "Contingent annuitant" means:

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

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

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

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

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



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

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

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

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

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

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

16 (20) "Distributee" means:

17 (a) a member;

18 (b) a member's surviving spouse;

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

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

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

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

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

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

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

1 the member's accumulated contributions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (a) terminated from service; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (a) the member's contribution account;

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

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

23 ~~(54)~~(55) "Vested member" or "vested" means:

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

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

28 ~~(55)~~(56) "Written application" or "written election" means a written instrument, prescribed by the board  
29 or required by law, properly signed and filed with the board, that contains all required information, including  
30 documentation that the board considers necessary.

1           ~~(56)~~(57) "Written instrument" includes an electronic record containing an electronic signature, as defined  
2 in 30-18-102."

3

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

5           **"19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters  
6 enumerated in 19-2-302.

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

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

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

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

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

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

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

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

28           (10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings  
29 are implemented, the board shall adopt rules governing means of implementation, including the specification of  
30 eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party

1 mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement  
2 systems or plans administered by the board.

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

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

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

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

16 **"19-2-407. Reports.** (1) As soon as practical after the close of each fiscal year, the board shall file with  
17 the governor and with the legislature pursuant to 5-11-210 a report of its work for that fiscal year. The report must  
18 include but is not limited to:

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

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

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

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

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

2           **"19-2-715. Purchase of Montana public service.** (1) (a) An active member may, at any time before  
3 retirement, file a written application with the board to purchase as service credit in the member's retirement  
4 system all or any portion of the member's previous service credit in the public employees', judges', highway patrol  
5 officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement  
6 system if the member has:

7           (i) received or is eligible to receive a refund of accumulated contributions; or

8           (ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or  
9 13 of this title.

10           (b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the  
11 member's current retirement system, based on the system's most recent actuarial valuation and the annual  
12 compensation of the member, minus the employer contribution provided in subsection (1)(c).

13           (c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the  
14 member's former retirement system to the member's current retirement system an amount equal to the employer  
15 contributions made on compensation during the member's former service, but no more than an amount equal to  
16 the normal cost contribution rate minus the employee contribution rate in the member's current retirement system  
17 according to the system's most recent actuarial valuation.

18           (d) If the member was formerly in the public employees' retirement system's defined contribution plan,  
19 the member shall pay the actuarial cost of the service credit in the member's current retirement system based  
20 on the system's most recent actuarial valuation and the annual compensation of the member. The member is  
21 eligible to transfer ~~the vested~~ a portion of the member's defined contribution account to pay the balance due. ~~Any~~  
22 ~~nonvested portion of the defined contribution account is forfeited pursuant to 19-3-2117.~~

23           (2) (a) An active member may, at any time before retirement, file a written application with the board to  
24 purchase all or a portion of previous employment for the state or a political subdivision of the state. The member  
25 shall provide salary and employment documentation certified by the member's former public employer. To  
26 purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the  
27 member's current retirement system, as determined by the board, based on the system's most recent actuarial  
28 valuation. For the purpose of this subsection (2)(a), a political subdivision of the state includes a school district.

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



1

2           **Section 10.** Section 19-3-316, MCA, is amended to read:

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

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

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

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

18           ~~———— (b) The employer contribution required under subsection (3) terminates on July 1 following the board's~~  
19 ~~receipt of the system's actuarial valuation if:~~

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

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

25

26           **Section 11.** Section 19-3-319, MCA, is amended to read:

27           **"19-3-319. State contributions for local government and school district employers.** (1) The state  
28 shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation  
29 paid to all employees of local government entities and school districts ~~on and after July 1, 1997~~, except those  
30 employees properly excluded from membership.

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

5           ~~(i) beginning July 1, 2007, 0.135%, and~~

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

7           ~~(b) The additional contribution under subsection (2)(a) terminates when the additional contribution under~~  
 8 ~~19-3-316(3) terminates.~~

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

12

13           **Section 12.** Section 19-3-401, MCA, is amended to read:

14           **"19-3-401. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as  
 15 provided in subsection (6) and as otherwise provided in this chapter, all employees must become members of  
 16 the defined benefit plan on the first day of service. Each employer shall file with the board information affecting  
 17 their employees' status as members as the board may require. An employee may become a member of the  
 18 defined contribution plan only as provided in Title 19, chapter 3, part 21, or subsection (6).

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

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

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

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

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

1 benefit payments if the member either:

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

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

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

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

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

11

12 **Section 13.** Section 19-3-412, MCA, is amended to read:

13 **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and ~~subsection~~ subsections (2)  
14 and (3) of this section, the following employees and elected officials employed or assuming office before [the  
15 effective date of this section] in covered positions shall elect either to become active members of the retirement  
16 system or to decline this optional membership by filing an irrevocable, written application with the board in the  
17 manner prescribed in subsection ~~(3)~~ (4):

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

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

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

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

25 (c) employees directly appointed by the governor;

26 (d) employees working 10 months or less for the legislative branch to perform work related to the  
27 legislative session;

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

29 (f) employees of county hospitals or rest homes.

30 (2) A member who is elected to a local government position in which the member works less than 960

1 hours in a calendar year may, within 90 days of being elected, decline optional membership with respect to the  
2 member's elected position.

3 (3) An individual described in subsections (1)(a) through (1)(f) or (2) who is initially hired or initially  
4 elected or appointed to office on or after [the effective date of this section] shall within 90 days of being elected  
5 or appointed elect either to become an active member of the defined contribution retirement plan provided for in  
6 Title 19, chapter 3, part 21, or to decline this optional membership by filing an irrevocable, written application with  
7 the board in the manner prescribed in subsection (4).

8 ~~(3)(4)~~ (a) The board shall prescribe the form of the written application required pursuant to ~~subsection~~  
9 ~~subsections (1) and (3)~~ and provide written application forms to each employer.

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

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

13 (i) for an employee described in subsection (1)(d), within 90 days of the commencement of the  
14 employee's employment; and

15 (ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within  
16 90 days of the commencement of the employee's or elected official's employment.

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

18 ~~(4)(5)~~ If the employee or elected official fails to file the written application required under ~~subsection~~  
19 ~~subsections (1) and (3), as applicable,~~ with the board within the time allowed in subsection ~~(3) (4)~~, the employee  
20 or elected official waives membership.

21 ~~(5)(6)~~ An employee or elected official who declines optional membership may not receive membership  
22 service or service credit for the employment for which membership was declined.

23 ~~(6)(7)~~ An employee or elected official who declined optional membership but ~~later~~ before [the effective  
24 date of this section] becomes a member may purchase service credit for the period of time beginning with the  
25 date of employment in which membership was declined to the commencement of membership. Purchase of  
26 service credit pursuant to this subsection must comply with 19-3-505.

27 ~~(7)(8)~~ Except as provided in subsection (2), membership in the retirement system is not optional for an  
28 employee or elected official who is already a member. Upon employment in a position for which membership is  
29 optional:

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

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

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

3 ~~(8)(9)~~ (a) An employee who declines membership for a position for which membership is optional may  
4 not later become a member while still employed with the same employer but in a different optional membership  
5 position.

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

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

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

13 ~~(9)(10)~~ An employee accepting a position that requires membership must become a member even if the  
14 employee previously declined membership and did not have a 30-day break in service."

15

16 **Section 14.** Section 19-3-2101, MCA, is amended to read:

17 "**19-3-2101. Definitions.** Unless the context requires otherwise, as used in this part, the following  
18 definitions apply:

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

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

23 ~~(4)(3)~~ "Member" means a person with a retirement account in the defined contribution plan.

24 ~~(2)(4)~~ "Optional retirement program" means the retirement plan established by the board of regents  
25 under Title 19, chapter 21 of this title.

26 ~~(3)(5)~~ "Plan" or "defined contribution plan" means the defined contribution retirement plan.

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

29

30 **Section 15.** Section 19-3-2106, MCA, is amended to read:

1           **"19-3-2106. Limited contract right.** The statutory provisions governing the defined contribution plan  
 2 and the optional retirement program are subject to amendment by the legislature. Employees choosing the  
 3 defined contribution plan or the optional retirement program pursuant to this part or who are otherwise members  
 4 of this plan do not have a contract right to the specific terms and conditions specified in statute on the date the  
 5 employee's choice or membership in the plan becomes effective."  
 6

7           **Section 16.** Section 19-3-2111, MCA, is amended to read:

8           **"19-3-2111. Plan membership -- written election required -- failure to elect -- effect of election. (1)**  
 9 Except as otherwise provided in this part, an employee initially hired by a covered employer on or after [the  
 10 effective date of this section] must become a member of the defined contribution plan on the first day of service.  
 11 Each employer shall file with the board information affecting the status of the employer's employees as members  
 12 of the defined contribution plan as the board may require.

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

15           ~~(1)~~(3) Except as otherwise provided in this part:

16           (a) a member who was an inactive member of the defined benefit plan on ~~the effective date of the~~  
 17 ~~defined contribution plan~~ [the effective date of this section], who has not previously made an election required  
 18 by this section including the default election pursuant to subsection (4)(b), and who is rehired into covered  
 19 employment after ~~the plan effective date~~ [the effective date of this section] may, within the 12-month period  
 20 provided for in subsection ~~(2)(a)~~ (4)(a), elect to transfer to and become a member of the defined contribution plan  
 21 regardless of whether the member remains active, becomes inactive, or terminates employment and plan  
 22 membership within the 12-month period;

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

28           ~~(2)~~(4) (a) Elections made pursuant to this section must be made on a form prescribed by the board and  
 29 must be made within 12 months from the month that the employer properly reports the new or rehired member  
 30 to the board.

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

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

7 ~~(3)(5)~~ A member in either the defined benefit plan or the defined contribution plan who becomes an  
8 inactive member after an election under this section and who returns to active membership remains in the plan  
9 previously elected.

10 ~~(4)(6)~~ A ~~system~~ member may not simultaneously be a member of the defined benefit plan and the  
11 defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan.  
12 A period of service may not be credited in more than one retirement plan within the system under Title 19, chapter  
13 3.

14 ~~(5)(7)~~ The provisions of this part do not prohibit the board from adopting rules to allow an employee hired  
15 before [the effective date of this section] to elect the defined contribution plan from the first day of covered  
16 employment.

17 ~~(6)(8)~~ A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907  
18 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution  
19 plan unless the order is modified to apply under the defined contribution plan.

20 ~~(7)(9)~~ (a) A member of the defined benefit plan who is purchasing service credit through installment  
21 payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer  
22 membership to the defined contribution plan unless the member first completes or terminates the contract for  
23 purchase of service credit.

24 (b) A member who files an election to transfer membership may make a lump-sum payment for up to  
25 the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of  
26 section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to  
27 19-2-708, must be made with after-tax dollars.

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

1 the contract."

2

3 **Section 17.** Section 19-3-2112, MCA, is amended to read:

4 **"19-3-2112. Plan choices for members employed by university system -- amount available to**  
 5 **transfer -- effect on rights.** (1) If a member who is employed by the Montana university system is eligible to  
 6 make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing  
 7 to transfer to the defined contribution plan, elect to transfer membership to the university system's optional  
 8 retirement program provided for under Title 19, chapter 21 ~~of this title~~.

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

11 (a) (i) A member employed by the university system who is an active member of the defined benefit plan  
 12 ~~on the effective date of the defined contribution plan~~ [the effective date of this section] and who has not yet made  
 13 the election required by this section, including the default election pursuant to subsection (2)(c), may, within the  
 14 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the optional  
 15 retirement program regardless of whether the member remains active, becomes inactive, or terminates  
 16 employment and plan membership within the 12-month period.

17 (ii) A member who was an inactive member of the defined benefit plan ~~on the effective date of the defined~~  
 18 ~~contribution plan~~ [the effective date of this section], who has not yet made the election required by this section  
 19 including the default election pursuant to subsection (2)(c), and who is hired or rehired into covered employment  
 20 with the university system after ~~that date~~ [the effective date of this section] may, within the 12-month period  
 21 provided for in subsection (2)(b), elect to transfer to and become a member of the optional retirement program  
 22 regardless of whether the member remains active, becomes inactive, or terminates employment and plan  
 23 membership within the 12-month period.

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

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



1 be made within 12 months from the month that the employer properly reports the new or rehired member to the  
2 board.

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

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

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

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

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

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

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

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

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

1 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must  
2 be made with after-tax dollars.

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

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

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

12

13 **Section 18.** Section 19-3-2113, MCA, is amended to read:

14 **"19-3-2113. Reinstatement of plan membership -- purchase of prior service credit in defined**  
15 **benefit plan.** (1) (a) A member who became a member prior to [the effective date of this section] and who  
16 terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement  
17 program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment  
18 in less than 24 months is a member of the plan that the member last selected and is not eligible for a new plan  
19 choice election.

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

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

26 (ii) but on or after [the effective date of this section] must become a member of the defined contribution  
27 plan unless the member is eligible to elect membership to the optional retirement program as provided in  
28 19-3-2112.

29 (2) (a) An employee who returns to covered employment after terminating membership in the defined  
30 benefit plan, who is eligible to make a plan choice pursuant to subsection (1)(b)(i), and who elects to join the

1 defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may reinstate prior membership service and service  
 2 credit as provided in 19-2-603.

3 (b) An employee who became a member prior to [the effective date of this section] and who returns to  
 4 covered employment after terminating membership in the defined contribution plan or the optional retirement  
 5 program, who is eligible to make a plan choice pursuant to subsection (1)(b)(i), and who elects to join the defined  
 6 benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by  
 7 paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined  
 8 benefit plan. The member may not purchase membership service and service credit under this section in excess  
 9 of the member's length of service in the defined contribution plan or the optional retirement program."  
 10

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

12 **"19-3-2114. Amount available to transfer.** (1) (a) For an employee who was an active member of the  
 13 system on the day before the effective date of the defined contribution plan but before [the effective date of this  
 14 section] and who elects to transfer to the plan:

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

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

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

Years of membership service	Percentage of employer contributions available to transfer
26 Less than 5 years	65.53%
27 5 to 9 years	58.59%
28 10 to 14 years	55.26%

1	15 to 19 years	55.42%
2	20 or more years	57.53%

3 (2) For an employee hired on or after the effective date of the defined contribution plan who elects to  
 4 become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement  
 5 account an amount equal to the amount that would have been allocated to the member's account pursuant to  
 6 19-3-2117 had the employee become a plan member on the employee's hire date, plus 8% compounded annual  
 7 interest from the month that the contributions were received.

8 (3) For an employee who was an inactive member of the defined benefit plan on ~~the date that the defined~~  
 9 ~~contribution plan became effective~~ [the effective date of this section], who has not made an election pursuant to  
 10 19-3-2111 or 19-3-2112, including a default election, and who after that date became an active member and  
 11 elected to transfer to the defined contribution plan:

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

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

20

21 **Section 20.** Section 19-3-2115, MCA, is amended to read:

22 **"19-3-2115. Transfers or rollovers into plan -- service transfers --~~membership credit for purposes~~**  
 23 **of vesting.** (1) (a) Except as provided in subsection (2), the board shall accept the rollover of contributions and  
 24 the income on those contributions from another eligible retirement plan to the member's ~~vested~~ account as  
 25 allowed under applicable federal law.

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

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

3

4 **Section 21.** Section 19-3-2116, MCA, is amended to read:

5 **"19-3-2116. Vesting -- mandatory termination of membership -- forfeitures.** (1) A member's  
6 contribution account includes the member's and employer's contributions and the income on those contributions  
7 and is vested from the date that the employee becomes a member of the plan.

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

11 ~~(3)~~(2) A member's account for other contributions includes the member's rollovers of contributions made  
12 pursuant to 19-3-2115 and income on those contributions and is vested from the date that the contribution is  
13 credited to the account.

14 ~~(4)~~(3) A member who terminates service ~~after becoming a vested member~~ may terminate plan  
15 membership as provided in 19-3-2123.

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

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

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

23

24 **Section 22.** Section 19-3-2117, MCA, is amended to read:

25 **"19-3-2117. Allocation of contributions and forfeitures.** (1) The member contributions made under  
26 19-3-315 or [section 1] and additional contributions paid by the member for the purchase of service must be  
27 allocated to the plan member's retirement account.

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

30 (a) an amount equal to:

- 1           ~~(i)(a)~~ 4.19% 6.56% of compensation must be allocated to the member's retirement account;
- 2           ~~(ii)~~ ~~2.37%~~ of compensation must be allocated to the defined benefit plan as the plan choice rate;
- 3           ~~(iii)(b)~~ 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b);
- 4    and
- 5           ~~(iv)(c)~~ 0.3% of compensation must be allocated to the long-term disability plan trust fund established
- 6    pursuant to 19-3-2141; and
- 7           ~~(b)(d)~~ on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing
- 8    until the additional employer contributions terminate pursuant to 19-3-316; 0.27% of compensation must be
- 9    allocated in the following order:
- 10           ~~(i)~~ to the administrative account used by the board to meet the expenses of the plan's startup loan, until
- 11    paid in full;
- 12           ~~(ii)(i)~~ to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and
- 13           ~~(iii)(ii)~~ to the long-term disability plan trust fund to provide disability benefits to eligible members.
- 14           ~~(3) Forfeitures of employer contributions and investment income on the employer contributions may not~~
- 15    ~~be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to~~
- 16    ~~meet the plan's administrative expenses, including startup expenses."~~

17

18           **Section 23.** Section 19-3-2126, MCA, is amended to read:

19           "**19-3-2126. Refunds -- minimum account balance -- adjustment by rule.** (1) Before termination of

20    service, a member may not receive a refund of any portion of the member's ~~vested~~ account balance.

21           (2) Except as provided in 19-3-2142, a member who terminates service and whose ~~vested~~ account

22    balance is less than \$200 must be paid the ~~vested~~ account balance in a lump sum. ~~If the member's employer~~

23    ~~contribution account is not vested, the employer contributions and income are forfeited and must be allocated~~

24    ~~as provided in 19-3-2117.~~ The payment must be made as soon as administratively feasible without a written

25    application from the member.

26           (3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a),

27    a member who terminates service and whose ~~vested~~ account balance is between \$200 and \$1,000 must be paid

28    the ~~vested~~ account balance in a lump sum. The payment must be made as soon as administratively feasible. If

29    ~~the member's employer contribution account is not vested, the employer contributions and income are forfeited~~

30    ~~and must be allocated as provided in 19-3-2117.~~

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

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

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

11 (6) The board may by rule adjust the minimum account balance provided in this section as necessary  
 12 to maintain reasonable administrative costs and to account for inflation and in accordance with the requirements  
 13 of section 401(a)(31)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(31)(B), and applicable regulations."  
 14

15 **Section 24.** Section 19-3-2141, MCA, is amended to read:

16 **"19-3-2141. Long-term disability plan -- benefit amount -- eligibility -- administration and**  
 17 **rulemaking.** (1) (a) Except as provided in subsection (1)(b), a disabled member eligible under the provisions of  
 18 this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average  
 19 compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service  
 20 credit purchased under 19-3-513.

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

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

25 ~~(a) the member must be vested in the plan as provided in 19-3-2146;~~

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

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

30 ~~(d)(c)~~ the member shall satisfy the other applicable requirements of this section and the board's rules

1 adopted to implement this section.

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

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

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

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

11 (7) The board shall:

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

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

17

18 **Section 25.** Section 19-21-214, MCA, is amended to read:

19 **"19-21-214. Contributions and allocations for employees in positions covered under the public**  
20 **employees' retirement system.** (1) The contribution rates for employees in positions covered under the public  
21 employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

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

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

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

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

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

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

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

30 ~~(b)(c) on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing~~



1 ~~until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be~~  
 2 ~~allocated in the following order:~~

3 ~~—— (i) to the administrative account used by the public employees' retirement board to meet the expenses~~  
 4 ~~of the defined contribution plan's startup loan, until paid in full; and~~  
 5 ~~—— (ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability.~~

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

8  
 9 **NEW SECTION. Section 26. Repealer.** The following section of the Montana Code Annotated is  
 10 repealed:

11 19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.

12  
 13 **NEW SECTION. Section 27. Board to seek commissioner's ruling or opinion -- certification that**  
 14 **plan is effective.** (1) The public employees' retirement board shall, as soon as possible, request in writing a  
 15 ruling or determination from the commissioner of the internal revenue service as to whether the defined  
 16 contribution retirement plan of the public employees' retirement system as revised pursuant to [this act] affects  
 17 the status of the retirement system as a "qualified plan" pursuant to section 401(a) of the Internal Revenue Code.

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

21  
 22 **NEW SECTION. Section 28. Codification instruction.** [Sections 1 through 3] are intended to be  
 23 codified as an integral part of Title 19, chapter 3, part 21, and the provisions of Title 19, chapter 3, part 21, apply  
 24 to [sections 1 through 3].

25  
 26 **NEW SECTION. Section 29. Saving clause.** [This act] does not affect rights and duties that matured,  
 27 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

28  
 29 **NEW SECTION. Section 30. Effective dates -- contingency.** (1) Except as provided in subsection (2),  
 30 [this act] is effective on passage and approval.

