

## 1 HOUSE BILL NO. 70

2 INTRODUCED BY M. MENAHAN

3 BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE PUBLIC  
6 RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD;  
7 PERMITTING THE BOARD TO APPOINT ITS OWN ATTORNEY TO REVIEW PROPOSED BOARD RULES;  
8 CLARIFYING DEFINITIONS REGARDING TERMINATION OF SERVICE TO SPECIFY THAT A MEMBER WITH  
9 AN AGREEMENT TO RETURN TO WORK IS NOT ELIGIBLE TO RETIRE; CLARIFYING LIABILITY FOR  
10 INCORRECT REPORTING OR ERRONEOUS PAYMENTS; CLARIFYING THE EFFECT OF OLD  
11 MEMBERSHIP CARDS ON RETURNING MEMBERS; CLARIFYING THAT A SERVICE PURCHASE MUST  
12 STOP OR BE COMPLETED PRIOR TO PAYMENT OF A DISABILITY BENEFIT; CLARIFYING THAT  
13 GUARANTEED ANNUAL BENEFIT ADJUSTMENT PAYMENTS ARE NOT PAID RETROACTIVELY;  
14 ADDRESSING BANKED HOLIDAY PAYMENTS; TREATING THE MONTANA SCHOOL FOR THE DEAF AND  
15 BLIND AS A SCHOOL DISTRICT FOR CALCULATION OF MEMBERSHIP SERVICE DURING OFFICIAL  
16 VACATION; CLARIFYING THE TREATMENT OF ADDITIONAL OR ONE-FOR-FIVE SERVICE PURCHASES;  
17 PROVIDING THAT RETIRED MEMBERS MUST BE TERMINATED FROM EMPLOYMENT FOR AT LEAST 90  
18 DAYS PRIOR TO RETURNING TO SERVICE AS A WORKING RETIREE; CLARIFYING THE DEATH BENEFIT  
19 AVAILABLE TO A BENEFICIARY OF A MEMBER WHO WAS INACTIVE FOR LESS THAN 6 MONTHS AT THE  
20 TIME OF DEATH; CLARIFYING PAYMENT OF THE REMAINING OPTION 4 BENEFIT WHEN THE RETIREE  
21 AND ALL NAMED CONTINGENT ANNUITANTS DIE PRIOR TO THE END OF THE PERIOD CERTAIN;  
22 REDUCING THE ASSUMED RATE OF INTEREST; CLARIFYING THE BENEFIT AVAILABLE TO GAME  
23 WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM MEMBERS; ELIMINATING THE AD HOC  
24 BENEFIT INCREASE USED FOR PURCHASING POWER ADJUSTMENTS; AMENDING SECTIONS 2-4-110,  
25 2-15-1009, 17-6-203, 19-2-303, 19-2-403, 19-2-506, 19-2-603, 19-2-706, 19-2-715, 19-2-801, 19-2-802,  
26 19-2-908, 19-3-108, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-513, 19-3-901, 19-3-906, 19-3-1106,  
27 19-3-1201, 19-3-1202, 19-3-1203, 19-3-1501, 19-3-2114, 19-3-2117, 19-5-701, 19-7-301, 19-7-302, 19-7-1001,  
28 19-8-101, 19-8-601, 19-8-801, 19-8-1003, 19-13-301, AND 19-21-214, MCA; REPEALING ~~SECTION~~ SECTIONS  
29 19-3-1606 AND 19-8-604, MCA; AND PROVIDING AN EFFECTIVE DATE."

30

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

2

3 **Section 1.** Section 2-4-110, MCA, is amended to read:

4 **"2-4-110. Departmental review of rule notices.** (1) The head of each department of the executive  
5 branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each  
6 departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice  
7 of the name of the person appointed under this subsection and of any successor must be given to the secretary  
8 of state and the appropriate administrative rule review committee within 10 days of the appointment.

9 (2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other  
10 unit of the department, including units attached to the department for administrative purposes only under 2-15-121  
11 unless otherwise excepted, for compliance with this chapter before the notice is filed with the secretary of state.  
12 The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to  
13 consideration of:

14 (a) the adequacy of the statement of reasonable necessity for the intended action and whether the  
15 intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

16 (b) whether the proper statutory authority for the rule is cited;

17 (c) whether the citation of the code section or sections implemented is correct;

18 (d) whether the intended action is contrary to the code section or sections implemented or to other law;

19 and

20 (e) for a rule that initially implements legislation, whether the intended action is contrary to any comments  
21 submitted to the department by the primary sponsor of the legislation for the purposes of 2-4-302.

22 (3) The person appointed under subsection (1) shall sign each notice for which this section requires a  
23 review. The act of signing is an affirmation that the review required by this section has been performed to the best  
24 of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature  
25 required by this section."

26

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

28 **"2-15-1009. Public employees' retirement board -- terms -- allocation.** (1) There is a public  
29 employees' retirement board.

30 (2) The board consists of seven members appointed by the governor with the consent of the senate. The

1 members are:

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

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

6 (c) two members at large; and

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

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

10 (4) (a) The board is allocated to the department for administrative purposes only as prescribed in  
11 2-15-121.

12 (b) The board shall hire necessary employees as provided in 19-2-404.

13 (c) Consistent with its constitutional mandate to administer the retirement plans as a fiduciary of system  
14 participants and their beneficiaries, the board shall appoint its own existing attorney in lieu of the person  
15 appointed by the department, as provided for in 2-4-110, to have sole responsibility for the legal review of each  
16 board rule proposal notice, adoption notice, or other notice related to administrative rulemaking.

17 (5) Members of the board must be compensated and receive travel expenses as provided for in  
18 2-15-124."

19

20 **Section 3.** Section 17-6-203, MCA, is amended to read:

21 **"17-6-203. Separate investment funds.** Separate investment funds must be maintained as follows:

22 (1) the permanent funds, including all public school funds and funds of the Montana university system  
23 and other state institutions of learning referred to in Article X, sections 2 and 10, of the Montana constitution. The  
24 principal and any part of the principal of each fund constituting the Montana permanent fund type are subject to  
25 deposit at any time when due under the statutory provisions applicable to the fund and according to the provisions  
26 of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

27 (2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to  
28 each retirement or insurance system maintained by the state, including:

29 ~~(a) the highway patrol officers' retirement system described in Title 19, chapter 6;~~

30 ~~(b)~~(a) the public employees' retirement system described in Title 19, chapter 3;

- 1           **(b) the judges' retirement system described in Title 19, chapter 5;**  
 2           **(c) the highway patrol officers' retirement system described in Title 19, chapter 6;**  
 3           **(d) the sheriffs' retirement system described in Title 19, chapter 7;**  
 4           ~~(e)~~**(e) the game wardens' and peace officers' retirement system described in Title 19, chapter 8;**  
 5           **(f) the municipal police officers' retirement system described in Title 19, chapter 9;**  
 6           **(g) the firefighters' unified retirement system described in Title 19, chapter 13;**  
 7           **(h) the Volunteer Firefighters' Compensation Act under Title 19, chapter 17;**  
 8           ~~(i)~~**(i) the teachers' retirement system described in Title 19, chapter 20; and**  
 9           ~~(j)~~**(j) the workers' compensation program described in Title 39, chapter 71, part 23;**  
 10           (3) a pooled investment fund, including all other accounts within the treasury fund structure established  
 11 by 17-2-102;  
 12           (4) the fish and wildlife mitigation trust fund established by 87-1-611;  
 13           (5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions  
 14 made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest,  
 15 devise, or contribution to be observed by the state of Montana. If a gift, donation, grant, legacy, bequest, devise,  
 16 or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other  
 17 gifts, donations, grants, legacies, bequests, devises, or contributions.  
 18           (6) a fund consisting of coal severance taxes allocated to the coal severance tax trust fund under Article  
 19 IX, section 5, of the Montana constitution. The principal of the coal severance tax trust fund is permanent. If the  
 20 legislature appropriates any part of the principal of the coal severance tax trust fund by a vote of three-fourths  
 21 of the members of each house, the appropriation or investment may create a gain or loss in the principal.  
 22           (7) a Montana tobacco settlement trust fund established in accordance with Article XII, section 4, of the  
 23 Montana constitution and Title 17, chapter 6, part 6; and  
 24           (8) additional investment funds that are expressly required by law or that the board of investments  
 25 determines are necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular  
 26 source."  
 27

28           **Section 4.** Section 19-2-303, MCA, is amended to read:

29           **"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems  
 30 subject to this chapter, the following definitions apply:

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

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

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

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

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

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

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

16 (8) "Annuity" means:

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

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

21 (9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee  
22 may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

23 ~~(10)~~ (10) "Benefit" means:

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

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

29 ~~(11)~~ (11) "Board" means the public employees' retirement board provided for in 2-15-1009.

30 ~~(12)~~ (12) "Contingent annuitant" means:

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

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

5 ~~(12)~~(13) "Covered employment" means employment in a covered position.

6 ~~(13)~~(14) "Covered position" means a position in which the employee must be a member of the retirement  
7 system except as otherwise provided by law.

8 ~~(14)~~(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement  
9 systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

10 ~~(15)~~(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the  
11 public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title  
12 and that is not a defined benefit plan.

13 ~~(16)~~(17) "Department" means the department of administration.

14 ~~(17)~~(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the  
15 benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits,  
16 lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient,  
17 including annuities derived from the benefits or payments.

18 ~~(18)~~(19) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the  
19 distributee.

20 ~~(19)~~(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties  
21 by reason of physical or mental incapacity. The disability must be incurred while the member is an active member  
22 and must be one of permanent duration or of extended and uncertain duration, as determined by the board on  
23 the basis of competent medical opinion.

24 ~~(20)~~(21) "Distributee" means:

25 (a) a member;

26 (b) a member's surviving spouse;

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

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

1           ~~(21)~~(22) "Early retirement benefit" means the retirement benefit payable to a member following early  
2 retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

3           ~~(22)~~(23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover  
4 distribution:

5           (a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C.  
6 408(a);

7           (b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C.  
8 408(b);

9           (c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

10           (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

11           (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue  
12 Code, 26 U.S.C. 403(b);

13           (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26  
14 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of  
15 a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan  
16 from a plan under this title; or

17           (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26  
18 U.S.C. 408A.

19           ~~(23)~~(24) "Eligible rollover distribution":

20           (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the  
21 distributee, as provided in 19-2-1011;

22           (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former  
23 spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal  
24 Revenue Code, 26 U.S.C. 414(p).

25           ~~(24)~~(25) "Employee" means a person who is employed by an employer in any capacity and whose salary  
26 is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying  
27 retirement contributions pursuant to 7-11-105.

28           ~~(25)~~(26) "Employer" means a governmental agency participating in a retirement system enumerated in  
29 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as  
30 responsible for paying retirement contributions pursuant to 7-11-105.

1           ~~(26)~~(27) "Essential elements of the position" means fundamental job duties. An element may be  
2 considered essential because of but not limited to the following factors:

3           (a) the position exists to perform the element;

4           (b) there are a limited number of employees to perform the element; or

5           (c) the element is highly specialized.

6           ~~(27)~~(28) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the  
7 following June 30.

8           ~~(28)~~(29) "Inactive member" means a member who terminates service and does not retire or take a refund  
9 of the member's accumulated contributions.

10          ~~(29)~~(30) "Internal Revenue Code" has the meaning provided in 15-30-2101.

11          ~~(30)~~(31) "Member" means either:

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

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

15          ~~(31)~~(32) "Membership service" means the periods of service that are used to determine eligibility for  
16 retirement or other benefits.

17          ~~(32)~~(33) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost  
18 method required to fund accruing benefits for members of a defined benefit retirement plan during any year in  
19 the future.

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

21          ~~(33)~~(34) "Normal retirement age" means the age at which a member is eligible to immediately receive  
22 a retirement benefit based on the member's age, length of service, or both, as specified under the member's  
23 retirement system, without disability and without an actuarial or similar reduction in the benefit.

24          ~~(34)~~(35) "Pension" means benefit payments for life derived from contributions to a retirement plan made  
25 from state- or employer-controlled funds.

26          ~~(35)~~(36) "Pension trust fund" means a fund established to hold the contributions, income, and assets of  
27 a retirement system or plan in public trust.

28          ~~(36)~~(37) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll  
29 covered by the defined contribution plan members that is allocated to the public employees' retirement system's  
30 defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially



1 fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member  
2 selection of the defined contribution plan.

3 ~~(37)~~(38) "Regular contributions" means contributions required from members under a retirement plan.

4 ~~(38)~~(39) "Regular interest" means interest at rates set from time to time by the board.

5 ~~(39)~~(40) "Retirement" or "retired" means the status of a member who has:

6 (a) terminated from service; and

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

8 ~~(40)~~(41) "Retirement account" means an individual account within the defined contribution retirement plan  
9 for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of  
10 the defined contribution plan or the member's beneficiary.

11 ~~(41)~~(42) "Retirement benefit" means:

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

15 (b) in the case of the defined contribution plan, a benefit as defined in subsection ~~(9)(b)~~ (10)(b).

16 ~~(42)~~(43) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan  
17 under one of the public employee retirement systems enumerated in 19-2-302.

18 ~~(43)~~(44) "Retirement system" or "system" means one of the public employee retirement systems  
19 enumerated in 19-2-302.

20 ~~(44)~~(45) "Service" means employment of an employee in a position covered by a retirement system.

21 ~~(45)~~(46) "Service credit" means the periods of time for which the required contributions have been made  
22 to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined  
23 benefit retirement plan.

24 ~~(46)~~(47) "Service retirement benefit" means the retirement benefit that the member may receive at normal  
25 retirement age.

26 ~~(47)~~(48) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member  
27 of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are  
28 statutorily designated to receive benefits upon the death of the member.

29 ~~(48)~~(49) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement  
30 plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to

1 the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or  
2 otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the  
3 unfunded actuarial liabilities of the retirement plan.

4 ~~(49)~~(50) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a  
5 deceased member who died while in service under a defined benefit retirement plan.

6 ~~(50)~~(51) "Termination of employment", "termination from employment", "terminated employment",  
7 "terminated from employment", "terminate employment", or "terminates employment" 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; and

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

12 ~~(51)~~(52) "Termination of service", "termination from service", "terminated from service", "terminated  
13 service", "terminating service", or "terminates service" means that:

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

16 (b) no written or verbal agreement exists between employee and employer that the employee will return  
17 to covered employment in the future;

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

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

22 ~~(52)~~(53) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit  
23 retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that  
24 same date.

25 ~~(53)~~(54) "Vested account" means an individual account within a defined contribution plan that is for the  
26 exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the  
27 income on all contributions in each of the following accounts:

28 (a) the member's contribution account;

29 (b) the vested portion of the employer's contribution account; and

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

1           ~~(54)~~(55) "Vested member" or "vested" means:

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

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

6           ~~(55)~~(56) "Written application" or "written election" means a written instrument, prescribed by the board  
7 or required by law, properly signed and filed with the board, that contains all required information, including  
8 documentation that the board considers necessary.

9           ~~(56)~~(57) "Written instrument" includes an electronic record containing an electronic signature, as defined  
10 in 30-18-102."  
11

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

13           **"19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters  
14 enumerated in 19-2-302.

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

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

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

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

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

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

29           (8) The board shall enter into memoranda of understanding with the teachers' retirement system to  
30 exchange retirement system-related confidential information regarding members, former members, or retirees.

1 A memorandum must state that:

2 (a) the information may be used only for reasons related to verifying appropriate pension plan  
3 participation; and

4 (b) the requesting retirement system agrees to protect the confidentiality of the information and will  
5 disclose the requested information only as necessary to conduct official business.

6 ~~(8)~~(9) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial  
7 rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

8 ~~(9)~~(10) The board shall review the sufficiency of benefits paid by the retirement system or plan and  
9 recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the  
10 defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard  
11 of living.

12 ~~(10)~~(11) The board may implement third-party mailings under the provisions of 2-6-109. If third-party  
13 mailings are implemented, the board shall adopt rules governing means of implementation, including the  
14 specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated  
15 by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants  
16 of retirement systems or plans administered by the board.

17 ~~(11)~~(12) In discharging duties, the board, a member of the board, or an authorized representative of the  
18 board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and  
19 records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers,  
20 correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104  
21 of the Montana Administrative Procedure Act.

22 ~~(12)~~(13) The board may by rule or otherwise delegate to the board's executive director or any other staff  
23 member any of the powers or duties conferred by law upon the board except as otherwise provided by law and  
24 except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection ~~(11)~~  
25 (12) or the contested case procedure of the Montana Administrative Procedure Act.

26 ~~(13)~~(14) The board shall perform other duties and may exercise the powers concerning the defined  
27 contribution plan for plan members as provided in chapter 3, part 21, of this title."  
28

29 **Section 6.** Section 19-2-506, MCA, is amended to read:

30 **"19-2-506. Payment of contributions by employers -- accompanying reports -- penalty -- liability.**

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

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

8 (a) an action in a court of competent jurisdiction against the employer; or

9 (b) deductions, at the request of the board, from any other money payable to the employer by any  
10 agency or fund of the state.

11 (3) (a) The board shall prescribe by rule the procedure for submitting employer reports. The reports must  
12 include data about member and nonmember employees who work for the employer.

13 (b) The rules must specify the employee categories to be reported, the data required, the method of  
14 reporting, the reporting period, and the frequency of reports needed to meet the demands of the relevant  
15 retirement system or plan.

16 (c) The board may establish by rule the penalty fees for noncompliance in reporting any of the required  
17 information and the procedure for collection of the fees.

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

20 (5) The board is not responsible or liable for any incorrect reporting or erroneous payment of contributions  
21 by an employer.

22 ~~(5)~~(6) The board, from time to time, may send materials to an employer for redistribution to employees.  
23 To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing  
24 the materials."  
25

26 **Section 7.** Section 19-2-603, MCA, is amended to read:

27 **"19-2-603. Reinstatement after withdrawal of contributions.** ~~(1)~~ Except as otherwise provided in  
28 chapter 3, part 21, of this title and this section, a person who again becomes a member of a defined benefit plan  
29 subsequent to the refund of the person's accumulated contributions after a termination of previous membership  
30 is considered a new member without previous membership service or service credit. The person may reinstate

1 that membership service or service credit by redepositing the sum of the accumulated contributions that were  
 2 refunded to the person at the last termination of the person's membership plus the interest that would have been  
 3 credited to the person's accumulated contributions had the refund not taken place. If the person makes this  
 4 redeposit, the membership service and service credit previously canceled must be reinstated.

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

9

10 **Section 8.** Section 19-2-706, MCA, is amended to read:

11 **"19-2-706. Additional service credit for active member involuntarily terminated from employment.**

12 (1) The provisions of subsection (3) apply to an employee of the state or university system if:

13 (a) the employee is an active member of the public employees', defined benefit plan or the game  
 14 wardens' and peace officers', sheriffs', firefighters' unified, or highway patrol officers' retirement system;

15 (b) the employee has involuntarily terminated from employment because of elimination of the employee's  
 16 position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency,  
 17 or other actions by the legislature or, in the case of a member who is a legislator, the legislator is terminated from  
 18 office in either one of the houses of the legislature because of term limits;

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

21 (d) the employee waives the rights and benefits for which the employee would otherwise be eligible  
 22 under the State Employee Protection Act.

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

25 (3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of  
 26 purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513,  
 27 19-6-804, 19-7-804, 19-8-904, or 19-13-405. The employer-paid portion must be calculated using the formula  $A$   
 28  $\times B \times C$  when:

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

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

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

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

10 (5) The board may allow an employer to pay the contributions required under subsection (3) in  
11 installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

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

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

18

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

20 **"19-2-715. Purchase of Montana public service.** (1) (a) An active member may, at any time before  
21 retirement, file a written application with the board to purchase as service credit in the member's retirement  
22 system all or any portion of the member's previous service credit in the public employees', judges', highway patrol  
23 officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement  
24 system if the member has:

25 (i) received or is eligible to receive a refund of accumulated contributions; ~~or~~ and

26 (ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or  
27 13 of this title.

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

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

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

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

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

19

20 **Section 10.** Section 19-2-801, MCA, is amended to read:

21 **"19-2-801. Designation of beneficiary.** (1) ~~(a)~~ In the absence of any statutory beneficiaries, designated  
22 beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the  
23 benefit of natural living persons that the member or payment recipient designates on the membership card or  
24 other form provided by the board.

25 (2) Unless otherwise provided by statute, a member or payment recipient may revoke the designation  
26 and name different designated beneficiaries by filing with the board a new membership card or other form  
27 provided by the board.

28 (3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the  
29 board shall reference the membership card executed by the person prior to initial termination of membership for  
30 the same purposes as prior to termination. Beneficiaries nominated on that membership card continue until



1 changed as provided in subsection (2) of this section.

2 ~~(4) (a)~~ Except as provided in ~~subsection (1)(b)~~ subsections (4)(b) and (4)(c), the beneficiary designation  
3 on the most recent beneficiary designation membership card filed with the board is effective for all purposes until  
4 the member retires.

5 (b) A member may elect to either override or retain the member's existing beneficiary designation when  
6 completing a membership card for temporary or secondary employment with another employer within the same  
7 Title 19 retirement system.

8 (c) When a member retires, the designated beneficiaries or contingent annuitants named on the  
9 retirement application become effective.

10 ~~(2)(5)~~ If a statutory or designated beneficiary predeceases the member or payment recipient, the  
11 predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts  
12 proportional to each remaining statutory or designated beneficiary's original share.

13 ~~(3)(6)~~ A statutory or designated beneficiary who renounces an interest in the payment rights of a member  
14 or payment recipient will be considered, with respect to that interest, as having predeceased the member or  
15 payment recipient.

16 (7) A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501,  
17 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of  
18 the member."

19

20 **Section 11.** Section 19-2-802, MCA, is amended to read:

21 **"19-2-802. Effect of no designation of beneficiary or no surviving statutory or designated**  
22 **beneficiary.** (1) If a member or payment recipient fails to name a designated beneficiary or if a statutory or  
23 designated beneficiary does not survive the member or payment recipient, the estate of the member or payment  
24 recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the  
25 member's or payment recipient's death. If the estate, as either a designated beneficiary or as a beneficiary by  
26 default as provided in this subsection, would not be probated but for the amount due to the estate from the  
27 retirement system, all of the amount due to the estate must be paid directly, without probate, to the surviving next  
28 of kin of the deceased or the guardians of the survivor's estate, share and share alike.

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

30 (a) husband or wife;

- 1 (b) children;
- 2 (c) father and mother;
- 3 (d) grandchildren;
- 4 (e) brothers and sisters; or
- 5 (f) nieces and nephews.

6 (3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at  
7 the date of payment there is a living person in any of the groups preceding the group of which the person is a  
8 member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by  
9 the board, that there are no living individuals in the groups preceding the group of which the person is a member  
10 and that the estate of the deceased will not be probated.

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

13

14 **Section 12.** Section 19-2-908, MCA, is amended to read:

15 **"19-2-908. Time of commencement of benefit -- rulemaking.** (1) (a) The board shall grant a benefit  
16 to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has  
17 fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board.  
18 However, the board may, on its own accord and without a written application, begin benefit payments to a  
19 member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

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

22 (2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first  
23 day of the month following the eligible member's last day of employment or, if requested by the member in writing,  
24 on the first day of a later month.

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

1 partial month is not subject to employer or employee contributions.

2 (3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a  
3 member must commence on the day following the member's termination from employment.

4 (b) ~~The~~ If a disabled member continues with a purchase of service or chooses to purchase service  
5 following termination of employment, the member's disability benefit may not commence until the service  
6 purchase is completed.

7 (4) If a member begins receiving retirement benefits payments later than when the member is initially  
8 eligible, the guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711,  
9 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid  
10 retroactively. The guaranteed annual benefit adjustment begins on does not commence until January 1 of the  
11 year after the year in which the member has received an amount equal to or greater than 12 months of disability  
12 begins to receive the member's retirement benefit payments payment. The guaranteed annual benefit adjustment  
13 may not be paid retroactively.

14 ~~(4)(5)~~ Monthly survivorship benefits from a defined benefit plan must commence on the day following  
15 the death of the member.

16 ~~(5)(6)~~ Estimated and finalized benefit payments must be issued as provided in rules adopted by the  
17 board.

18 ~~(6)(7)~~ With respect to the defined contribution plan, the board shall adopt rules regarding the  
19 commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its  
20 implementing regulations."

21

22 **Section 13.** Section 19-3-108, MCA, is amended to read:

23 **"19-3-108. Definitions.** Unless the context requires otherwise, as used in this chapter, the following  
24 definitions apply:

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

29 (b) Compensation does not include:

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

- 1 (ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;  
2 (iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related  
3 services;  
4 (iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and  
5 (v) lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid  
6 without termination of employment.

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

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

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

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

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

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

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

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

29 (7) "System" or "retirement system" means the public employees' retirement system established in  
30 19-3-103."

1

2           **Section 14.** Section 19-3-319, MCA, is amended to read:

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

7           (2) (a) Subject to subsection (2)(b), in addition to the contribution required under subsection (1), the state  
8 shall contribute monthly from the general fund to the pension trust fund a sum equal to ~~the following percentage~~  
9 0.27% of the compensation paid to all employees of school districts ~~on and after July 1, 2007~~, except for those  
10 employees properly excluded from membership:

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

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

13           (b) The additional contribution under subsection (2)(a) terminates when the additional contribution under  
14 19-3-316(3) terminates.

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

18

19           **Section 15.** Section 19-3-401, MCA, is amended to read:

20           **"19-3-401. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as  
21 otherwise provided in this chapter, all employees ~~must~~ become members of the defined benefit plan on the first  
22 day of service. Each employer shall file with the board information affecting ~~their~~ the employer's employees' status  
23 as members as the board may require. An employee may become a member of the defined contribution plan only  
24 as provided in Title 19, chapter 3, part 21.

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

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

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

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

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

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

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

10 (5) Time during which an employee of a school district, the Montana school for the deaf and blind, or a  
11 public institution of higher education is absent from service during official vacation is counted as membership  
12 service in determining eligibility for retirement benefits."

13

14 **Section 16.** Section 19-3-403, MCA, is amended to read:

15 **"19-3-403. Exclusions from membership.** The following persons may not become members of the  
16 retirement system and, except as provided in subsection (7), may not later purchase previous service under  
17 19-3-505:

18 (1) inmates or residents of state institutions or correctional institutions;

19 (2) persons in state institutions principally for the purpose of training but who receive compensation;

20 (3) independent contractors;

21 (4) persons who are members of any other retirement or pension system supported wholly or in part by  
22 funds of the United States government, any state government, or political subdivision of the state and who are  
23 receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from  
24 receiving credit for the same employment in two retirement systems supported wholly or in part by public funds,  
25 except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A  
26 member of the retirement system who, because of employment by the state, is required to become a member  
27 of any other system described in this subsection is considered, with regard to that employment, an inactive  
28 member of the retirement system, except that the member is not eligible for retirement or a refund of the  
29 member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

30 (a) The employees of an employer who has entered into a collective bargaining agreement involving a

1 multiemployer pension plan qualified by the internal revenue service and that requires contributions by the  
2 employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the  
3 retirement system.

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

7 (5) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system  
8 in accordance with 19-20-302(4);

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

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

17

18 **Section 17.** Section 19-3-412, MCA, is amended to read:

19 **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and subsection (2) of this section,  
20 the following employees and elected officials in covered positions shall elect either to become active members  
21 of the retirement system or to decline this optional membership by filing an irrevocable, written application with  
22 the board in the manner prescribed in subsection (3):

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

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

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

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

30 (c) employees directly appointed by the governor;

- 1 (d) employees working 10 months or less for the legislative branch to perform work related to the  
2 legislative session;
- 3 (e) the chief administrative officer of any city or county;
- 4 (f) employees of county hospitals or rest homes.
- 5 (2) A member who is elected to a local government position in which the member works less than 960  
6 hours in a calendar year may, within 90 days of ~~being elected~~ taking office, decline optional membership with  
7 respect to the member's elected position.
- 8 (3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1)  
9 and provide written application forms to each employer.
- 10 (b) Each employee or elected official in a position covered under subsection (1) shall obtain the written  
11 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) If the employee or elected official fails to file the written application required under subsection (1) with  
19 the board within the time allowed in subsection (3), the employee or elected official waives membership.
- 20 (5) An employee or elected official who declines optional membership may not receive membership  
21 service or service credit for the employment for which membership was declined.
- 22 (6) An employee or elected official who declined optional membership but later becomes a member may  
23 purchase service credit for the period of time beginning with the date of employment in which membership was  
24 declined to the commencement of membership. Purchase of service credit pursuant to this subsection must  
25 comply with 19-3-505.
- 26 (7) Except as provided in subsection (2), membership in the retirement system is not optional for an  
27 employee or elected official who is already a member. Upon employment in a position for which membership is  
28 optional:
- 29 (a) a member who was an active member before the employment remains an active member;
- 30 (b) a member who was an inactive member before the employment becomes an active member; and



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

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

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

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

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

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

15 **Section 18.** Section 19-3-513, MCA, is amended to read:

16 **"19-3-513. Application to purchase additional service.** (1) Subject to 19-3-514, a member with at least  
17 5 years of membership service may, at any time before retirement, file a written application with the board to  
18 purchase 1 year of additional service credit for each 5 years of membership service.

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

21 (3) Service credit purchased under this section is not membership service and may not be used to qualify  
22 a member for service retirement or to bring a member to 25 years of membership service for the purposes of  
23 19-3-902 or 19-3-904(2).

24 (4) ~~Once a member has at least 25 years of membership service, purchases~~ Purchases of one-for-five  
25 service will be used to adjust the early retirement reduction required in 19-3-906 if applicable."  
26

27 **Section 19.** Section 19-3-901, MCA, is amended to read:

28 **"19-3-901. Eligibility for service retirement.** (1) A member who has attained ~~the age of 60 years of~~  
29 age and has 5 years of membership service is eligible for service retirement. A member who has attained at least  
30 age 65 years of age and is ~~while~~ employed in a position covered by a public employees' retirement system is

1 eligible for service retirement regardless of the member's years of membership service. A member who has 30  
2 years or more of membership service is eligible for service retirement regardless of the member's age.

3 (2) In each of the circumstances described in subsection (1), the member has attained normal retirement  
4 age."

5

6 **Section 20.** Section 19-3-906, MCA, is amended to read:

7 **"19-3-906. Early retirement benefit.** (1) The amount of retirement benefit payable to a member  
8 following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that  
9 would have been payable to the member commencing at age 60 or upon completion of 30 years of membership  
10 service pursuant to 19-3-904.

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

13 (a) by ~~1/2 of 1%~~ 0.5% multiplied by the number of months up to a maximum of 60 months by which the  
14 retirement date precedes the date on which the member would have retired had the member attained 60 years  
15 of age or had the member completed 30 years of membership service; and

16 (b) by ~~3/10 of 1%~~ 0.3% multiplied by the number of months in excess of the 60 months in subsection  
17 (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member  
18 would have retired had the member attained 60 years of age or had the member completed 30 years of  
19 membership service.

20 (3) The actuarial reduction provided for in this section must be adjusted for any one-for-five service  
21 purchased under 19-3-513 ~~once the member has at least 25 years of membership service.~~"

22

23 **Section 21.** Section 19-3-1106, MCA, is amended to read:

24 **"19-3-1106. Limited reemployment -- reduction of service retirement benefit upon exceeding limits**  
25 **-- exceptions.** (1) A retired member under 65 years of age who has been terminated from employment for at  
26 least 90 days and is receiving a service retirement benefit or early retirement benefit may return to employment  
27 covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to  
28 active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree  
29 exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each  
30 \$1 earned after working 960 hours in that calendar year.

1           (2) A ~~retiree~~ retired member who is 65 years of age or older but less than 70 1/2 years of age, who has  
 2 been terminated from employment for at least 90 days, and who returns to employment covered by the retirement  
 3 system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount  
 4 that, when added to the retiree's current annual retirement ~~benefits~~ benefit, will not exceed the member's  
 5 annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year,  
 6 whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable  
 7 limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service  
 8 beyond the applicable limitation during that calendar year.

9           (3) The employer of a retiree returning to employment covered by the retirement system shall certify to  
 10 the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that  
 11 employment during any pay period after retirement. The certification of hours and compensation may be  
 12 submitted electronically pursuant to rules adopted by the board.

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

15           (5) The following members who return to employment covered by the retirement system are not subject  
 16 to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

17           (a) a retired member who is 70 1/2 years of age or older; or

18           (b) an elected official in a covered position who, as a retired member, declines optional membership as  
 19 provided in 19-3-412.

20           (6) For the purposes of this section, "employment covered by the retirement system" includes work  
 21 performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a  
 22 temporary service contractor as those terms are defined in 39-8-102."  
 23

24           **Section 22.** Section 19-3-1201, MCA, is amended to read:

25           **"19-3-1201. Eligibility for death payments.** Upon receipt of a written application filed with the board  
 26 by a designated beneficiary, the board shall grant a death payment to the designated beneficiary of any member  
 27 who dies:

28           (1) while in service;

29           ~~(2) within 6 months after the discontinuance of service but before retirement;~~

30           ~~(3)~~(2) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6

1 months;

2 ~~(4)(3)~~ while disabled, if the member has been continuously disabled since discontinuance of the  
3 member's service but is not receiving a disability retirement benefit; or

4 ~~(5)(4)~~ while an inactive member."  
5

6 **Section 23.** Section 19-3-1202, MCA, is amended to read:

7 **"19-3-1202. Amount of death payment.** (1) The amount of death payment to be made to the designated  
8 beneficiary of a deceased member is the sum of subsections (1)(a), (1)(b), and (1)(c) as follows:

9 (a) the member's accumulated contributions;

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

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

15 (2) (a) A beneficiary of a member who was inactive for less than 6 months at the time of death is eligible  
16 to receive the payment described in subsection (1)(b).

17 (b) A beneficiary of an inactive a member who was inactive for 6 or more months at the time of death is  
18 not eligible to receive the payment described in subsection (1)(b)."

19

20 **Section 24.** Section 19-3-1203, MCA, is amended to read:

21 **"19-3-1203. Election of optional death annuity.** The designated beneficiary of a deceased member  
22 may elect, by filing a written application with the board, to have the death payment provided for in ~~19-3-1204~~  
23 19-3-1202 paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments  
24 are not subject to increases that may be granted to other monthly retirement benefits."  
25

26 **Section 25.** Section 19-3-1501, MCA, is amended to read:

27 **"19-3-1501. Optional forms of benefits -- designation of contingent annuitant.** (1) The retirement  
28 benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in  
29 lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of  
30 the original benefit. An optional retirement benefit is initially payable during the member's or designated

1 beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as  
2 follows:

3 (a) option 2--a continuation of the optional retirement benefit after the death of the initial payee and  
4 payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the  
5 adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than  
6 the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

7 (i) the excess of the age of the member or designated beneficiary over the age of the nonspouse  
8 contingent annuitant based on their ages on their birthdays in a calendar year; or

9 (ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in  
10 subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years  
11 of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

12 (b) option 3--a continuation of one-half of the optional retirement benefit after the death of the initial  
13 payee and payable during the lifetime of the named contingent annuitant;

14 (c) option 4--a continuation of the optional retirement benefit to one or more contingent annuitants in the  
15 event of the initial payee's death before the end of a period certain, determined as follows:

16 (i) the period certain commences at the time that the initial payee first begins receiving the retirement  
17 benefit and is available as either:

18 (A) a 10-year period certain if the member retired at 75 years of age or younger; or

19 (B) a 20-year period certain if the member retired at 65 years of age or younger;

20 (ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a  
21 proportion of the initial payee's benefit on a share-and-share-alike basis;

22 (iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining  
23 contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted  
24 to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

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

28 (3) If the member or designated beneficiary or the named contingent annuitant dies before the first  
29 payment has been made under option 2 or 3, the election of the option is automatically canceled.

30 (4) If the member dies after retirement and within 30 days from the date that the member's written

1 application electing or changing an election of an optional retirement benefit is received by the board, then the  
2 election is void.

3 (5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may  
4 file a written application with the board to have the member's optional retirement benefit revert to the regular  
5 retirement benefit available at the time of the member's retirement if:

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

8 (b) the member's marriage to the original contingent annuitant has been dissolved and the original  
9 contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family  
10 law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following  
11 receipt of the written application and verification that the family law order does not grant the optional benefit to  
12 the original contingent annuitant.

13 (6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one  
14 of the following alternatives:

15 (a) revert to the member's original retirement benefit, increased by the amount of any adjustments  
16 received by the member since the effective date of the member's retirement;

17 (b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

18 (c) select a different option and name a new contingent annuitant.

19 (7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit  
20 must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

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

23

24 **Section 26.** Section 19-3-2114, MCA, is amended to read:

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

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

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

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

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

15 (2) For an employee hired on or after the effective date of the defined contribution plan who elects to  
 16 become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement  
 17 account an amount equal to the amount that would have been allocated to the member's account pursuant to  
 18 19-3-2117 had the employee become a plan member on the employee's hire date, plus:

19 (a) 8% compounded annual interest from the initial month that the contributions were received through  
 20 the last month that the contributions were received prior to July 1, 2011; and

21 (b) 7.75% compounded annual interest from July 1, 2011, forward.

22 (3) For an employee who was an inactive member of the defined benefit plan on the date that the defined  
 23 contribution plan became effective and who after that date became an active member and elected to transfer to  
 24 the defined contribution plan:

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

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

1 member's account pursuant to 19-3-2117, plus:

2 (i) 8% compounded annual interest from the initial month that the contributions were received through  
3 the last month that the contributions were received prior to July 1, 2011; and

4 (ii) 7.75% compounded annual interest from July 1, 2011, forward."

5

6 **Section 27.** Section 19-3-2117, MCA, is amended to read:

7 **"19-3-2117. Allocation of contributions and forfeitures.** (1) The member contributions made under  
8 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the  
9 plan member's retirement account.

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

12 (a) an amount equal to:

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

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

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

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

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

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

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

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

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

28

29 **Section 28.** Section 19-5-701, MCA, is amended to read:

30 **"19-5-701. Optional forms of benefits -- designation of contingent annuitant.** (1) The retirement



1 benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in  
2 lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of  
3 the original benefit. An optional retirement benefit is initially payable during the member's or designated  
4 beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as  
5 follows:

6 (a) option 2--a continuation of the optional retirement benefit after the death of the initial payee and  
7 payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the  
8 adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than  
9 the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

10 (i) the excess of the age of the member or designated beneficiary over the age of the nonspouse  
11 contingent annuitant based on their ages on their birthdays in a calendar year; or

12 (ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in  
13 subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years  
14 of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

15 (b) option 3--a continuation of one-half of the optional retirement benefit after the death of the initial  
16 payee and payable during the lifetime of the named contingent annuitant;

17 (c) option 4--a continuation of the optional retirement benefit to one or more contingent annuitants in the  
18 event of the initial payee's death before the end of a period certain, determined as follows:

19 (i) the period certain commences at the time that the initial payee first begins receiving the retirement  
20 benefit and is available as either:

21 (A) a 10-year period certain if the member retired at 75 years of age or younger; or

22 (B) a 20-year period certain if the member retired at 65 years of age or younger;

23 (ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a  
24 proportion of the initial payee's benefit on a share-and-share-alike basis;

25 (iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining  
26 contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted  
27 to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

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

1 (3) If the member or designated beneficiary or the named contingent annuitant dies before the first  
2 payment has been made under option 2 or 3, the election of the option is automatically canceled.

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

6 (5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may  
7 file a written application with the board to have the member's optional retirement benefit revert to the regular  
8 retirement benefit available at the time of the member's retirement if:

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

11 (b) the member's marriage to the original contingent annuitant has been dissolved and the original  
12 contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family  
13 law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following  
14 receipt of the written application and verification that the family law order does not grant the optional benefit to  
15 the original contingent annuitant.

16 (6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one  
17 of the following alternatives:

18 (a) revert to the member's original retirement benefit, increased by the amount of any adjustments  
19 received by the member since the effective date of the member's retirement;

20 (b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

21 (c) select a different option and name a new contingent annuitant.

22 (7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit  
23 must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

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

26

27 **Section 29.** Section 19-7-301, MCA, is amended to read:

28 **"19-7-301. Membership -- inactive vested members -- inactive nonvested members.** (1) (a) Except  
29 as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs' retirement system.

30 (b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain

1 a public employees' retirement system member or elect to become a member of the sheriffs' retirement system  
2 by filing a written election with the board at any time before retirement.

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

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

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

10 (b) A detention officer who was a member of the public employees' retirement system on July 1, 2005,  
11 may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement  
12 system by filing a written election with the board before May 1, 2006.

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

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

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

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

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

28 (b) An inactive nonvested member is eligible only for a refund of the member's accumulated  
29 contributions."  
30

1           **Section 30.** Section 19-7-302, MCA, is amended to read:

2           **"19-7-302. Ineligibility for membership in public employees' retirement system.** (1) After July 1,  
3 1974, a sheriff may not become a member of the public employees' retirement system and the provisions of The  
4 Public Employees' Retirement System Act do not apply to sheriffs.

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

8           (3) After July 1, 2005, a detention officer is not eligible to become a member of the public employees'  
9 retirement system and the provisions of The Public Employees' Retirement System Act do not apply to detention  
10 officers, except as provided in 19-7-301.

11           (4) This chapter may not be construed to deny any sheriff, ~~or~~ investigator, or detention officer any  
12 benefits accrued under provisions of the public employees' retirement system prior to membership in this  
13 retirement system."  
14

15           **Section 31.** Section 19-7-1001, MCA, is amended to read:

16           **"19-7-1001. Optional forms of benefits -- designation of contingent annuitant.** (1) The retirement  
17 benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in  
18 lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of  
19 the original benefit. An optional retirement benefit is initially payable during the member's or designated  
20 beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant, as  
21 follows:

22           (a) option 2--a continuation of the optional retirement benefit after the death of the initial payee and  
23 payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the  
24 adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than  
25 the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

26           (i) the excess of the age of the member or designated beneficiary over the age of the nonspouse  
27 contingent annuitant based on their ages on their birthdays in a calendar year; or

28           (ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in  
29 subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years  
30 of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

1 (b) option 3--a continuation of one-half of the optional retirement benefit after the death of the initial  
2 payee and payable during the lifetime of the named contingent annuitant;

3 (c) option 4--a continuation of the optional retirement benefit to one or more contingent annuitants in the  
4 event of the initial payee's death before the end of a period certain, determined as follows:

5 (i) the period certain commences at the time that the initial payee first begins receiving the retirement  
6 benefit and is available as either:

7 (A) a 10-year period certain if the member retired at 75 years of age or younger; or

8 (B) a 20-year period certain if the member retired at 65 years of age or younger;

9 (ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a  
10 proportion of the initial payee's benefit on a share-and-share-alike basis;

11 (iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining  
12 contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted  
13 to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

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

17 (3) If the member or designated beneficiary or the named contingent annuitant dies before the first  
18 payment has been made under option 2 or 3, the election of the option is automatically canceled.

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

22 (5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may  
23 file a written application with the board to have the member's optional retirement benefit revert to the regular  
24 retirement benefit available at the time of the member's retirement if:

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

27 (b) the member's marriage to the original contingent annuitant has been dissolved and the original  
28 contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family  
29 law order, as defined in 19-2-907. The benefit must revert effective on the first day of the month following receipt  
30 of the written application and verification that the family law order does not grant the optional benefit to the

1 contingent annuitant.

2 (6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one  
3 of the following alternatives:

4 (a) revert to the member's original retirement benefit, increased by the amount of any adjustments  
5 received by the member since the effective date of the member's retirement;

6 (b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

7 (c) select a different option and name a new contingent annuitant.

8 (7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit  
9 must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

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

12

13 **Section 32.** Section 19-8-101, MCA, is amended to read:

14 **"19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this  
15 chapter:

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

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

21 (2) "Highest average compensation" means a member's highest average monthly compensation during  
22 any 36 consecutive months of membership service or, in the event a member has not served at least 36 months,  
23 the total compensation earned divided by the number of months of service. Lump-sum payments for severance  
24 pay, including payment for compensatory leave, sick leave, ~~and~~ annual leave, and banked holiday time, paid to  
25 the member upon termination of employment may be used in the calculation of a retirement benefit only to the  
26 extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months  
27 included in the calculation of the highest average compensation. A lump-sum payment may not be added to a  
28 single month's compensation.

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

1 department of fish, wildlife, and parks money.

2 (4) "Motor carrier officer" means an employee of the department of transportation designated or  
3 appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

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

8

9 **Section 33.** Section 19-8-601, MCA, is amended to read:

10 **"19-8-601. Time of retirement.** (1) A member who has completed at least 20 years of membership  
11 service and reached ~~the age of~~ 50 years of age has attained normal retirement age and may retire with a service  
12 retirement benefit by filing a written application with the board.

13 (2) A vested member who terminated service before completing 20 years of membership service may  
14 begin receiving a service retirement benefit upon reaching 55 years of age and filing a written application with  
15 the board."

16

17 **Section 34.** Section 19-8-801, MCA, is amended to read:

18 **"19-8-801. Optional forms of benefits -- designation of contingent annuitant.** (1) The retirement  
19 benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in  
20 lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of  
21 the original benefit. An optional retirement benefit is initially payable during the member's or designated  
22 beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant as  
23 follows:

24 (a) option 2--a continuation of the optional retirement benefit after the death of the initial payee and  
25 payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the  
26 adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than  
27 the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

28 (i) the excess of the age of the member or designated beneficiary over the age of the nonspouse  
29 contingent annuitant based on their ages on their birthdays in a calendar year; or

30 (ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in

1 subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years  
2 of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

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

5 (c) option 4--a continuation of the optional retirement benefit to one or more contingent annuitants in the  
6 event of the initial payee's death before the end of a period certain, determined as follows:

7 (i) the period certain commences at the time that the initial payee first begins receiving the retirement  
8 benefit and is available as either:

9 (A) a 10-year period certain if the member retired at 75 years of age or younger; or

10 (B) a 20-year period certain if the member retired at 65 years of age or younger;

11 (ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a  
12 proportion of the initial payee's benefit on a share-and-share-alike basis;

13 (iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining  
14 contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted  
15 to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

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

19 (3) If the member or designated beneficiary or the named contingent annuitant dies before the first  
20 payment has been made under option 2 or 3, the election of the option is automatically canceled.

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

24 (5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may  
25 file a written application with the board to have the member's optional retirement benefit revert to the regular  
26 retirement benefit available at the time of the member's retirement if:

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

29 (b) the member's marriage to the original contingent annuitant has been dissolved and the original  
30 contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family



1 law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following  
 2 receipt of the written application and verification that the family law order does not grant the optional benefit to  
 3 the original contingent annuitant.

4 (6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one  
 5 of the following alternatives:

6 (a) revert to the member's original retirement benefit, increased by the amount of any adjustments  
 7 received by the member since the effective date of the member's retirement;

8 (b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

9 (c) select a different option and name a new contingent annuitant.

10 (7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit  
 11 must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

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

14

15 **Section 35.** Section 19-8-1003, MCA, is amended to read:

16 "**19-8-1003. Nonduty-related death of active member.** If a member dies before reaching normal  
 17 retirement age, the member's designated beneficiary may choose either a lump-sum refund of the member's  
 18 accumulated contributions or the actuarial equivalent of the early service retirement benefit ~~as~~ provided for in  
 19 ~~19-8-604~~ 19-8-601."

20

21 **Section 36.** Section 19-13-301, MCA, is amended to read:

22 "**19-13-301. Active membership -- inactive vested member -- inactive nonvested member.** (1)

23 ~~Except as provided in subsection (7), a~~ A full-paid firefighter becomes an active member of the retirement system:

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

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

26 (c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the  
 27 effective date of the election if the firefighter is employed by the employer on that date.

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

30 (3) A part-paid firefighter may elect to become a member of the retirement system by filing an irrevocable

1 written election with the board within 90 days of becoming a part-paid firefighter.

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

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

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

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

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

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

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

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

17 ~~(7) (a) A firefighter previously employed in a position covered under the public employees' retirement~~  
18 ~~system and who is first hired into a position covered under the firefighters' unified retirement system after attaining~~  
19 ~~45 years of age may elect to remain in the public employees' retirement system.~~

20 ~~—— (b) A firefighter making an irrevocable election to remain in the public employees' retirement system shall~~  
21 ~~make the election in a manner prescribed by the board within 90 days of being hired into the position otherwise~~  
22 ~~covered under the firefighters' unified retirement system.~~

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

26  
27 **NEW SECTION. Section 37. Reemployment of retired member.** A retired member who is receiving  
28 a service retirement benefit or early retirement benefit may return to employment covered by the retirement  
29 system for a period not to exceed 480 hours in any calendar year without returning to active service and without  
30 any effect to the retiree's retirement benefit.

1

2           **Section 38.** Section 19-21-214, MCA, is amended to read:

3           **"19-21-214. Contributions and allocations for employees in positions covered under the public**

4 **employees' retirement system.** (1) The contribution rates for employees in positions covered under the public

5 employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

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

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

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

9           (a) an amount equal to:

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

11           (ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees'

12 retirement system as the plan choice rate; and

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

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

15 until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be

16 allocated in the following order:

17           (i) to the administrative account used by the public employees' retirement board to meet the expenses

18 of the defined contribution plan's startup loan, until paid in full; and

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

20           (3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement

21 board, but only as described in and in a manner consistent with the express provisions of 19-3-2121."

22

23           **NEW SECTION. Section 39. Repealer.** The following ~~section~~ SECTIONS of the Montana Code Annotated

24 ~~is~~ ARE repealed:

25 19-3-1606.     Purchasing power adjustment.

26 19-8-604.     EARLY RETIREMENT BENEFIT.

27

28           **NEW SECTION. Section 40. Codification instruction.** [Section 37] is intended to be codified as an

29 integral part of Title 19, chapter 13, and the provisions of Title 19, chapter 13, apply to [section 37].

30

