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A Defined Contribution Retirement Plan

An Option for Members of the Public Employees' Retirement System

*Final Recommendations of the
Committee on Public Employee Retirement Systems*

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December 1998

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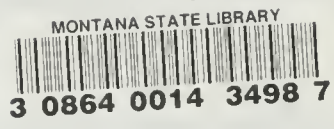
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**An Option for Members of the
Public Employees' Retirement System**

*Final Recommendations of the
Committee on Public Employee Retirement Systems*

Prepared for the
Committee on Public Employee Retirement System

by Sheri S. Heffelfinger, Research Analyst
Montana Legislative Services Division
December 1998

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Acknowledgments

On behalf of the Committee on Public Employee Retirement Systems, staff would like to extend a special thanks to Mr. Christopher Bone, Chief Actuary, Mr. Douglas Forrester, Director of Public Plan Practice, and the entire staff of Actuarial Sciences and Associates, Inc. for their dedication and responsiveness on this project. Thanks, too, to Mr. Mike O'Connor, Director of the Public Employees' Retirement Division, and the staff of the Public Employees' Retirement Board for their cooperation and assistance.

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www.libtool.com.cn **RECOMMENDATION SUMMARY**

To comply with House Bill No. 90, which was enacted by the 1997 Legislature, the Committee on Public Employee Retirement Systems (CPERS) recommends that to increase the portability of retirement contributions, provide more retirement plan flexibility, allow for individual choice regarding investment of retirement savings, and retain a specified benefit in retirement, the Public Employees' Retirement System (PERS) should consist of two types of retirement plans. The two types of retirement plans should be the current PERS defined benefit (DB) plan, which would remain essentially unchanged, and a new defined contribution (DC) plan, which would be added to PERS as an optional plan.

Under a DB plan, all eligible members receive a specified benefit that is formula-driven, predictable, and guaranteed, and the employer has the risk, responsibility, and control. Under a DC plan, benefit levels depend on total contributions and investment earnings, and the employee has the risk, responsibility, and control.

Under CPERS's recommendations, all current PERS members would be given a certain amount of time in which to make a one-time choice about whether to stay in the PERS DB plan or transfer to the new DC plan. New PERS members would initially be enrolled in the DB plan and would also have a certain amount of time in which to make the transfer decision. PERS retirees would not be affected by these recommendations.

About 28,000 state, university, school district, county, and city employees are active PERS members. Nearly 500 different employers participate in PERS. Currently, DB plan assets amount to more than \$2 billion. These assets are held in trust to pay benefits for PERS members and their beneficiaries. PERS membership is mandatory for employees in PERS-covered positions. Effective July 1, 1998, required employee and employer contributions will be 6.9% of compensation. CPERS's recommendations would not increase contribution rates.

PERS is governed by the Public Employees' Retirement Board, which consists of six members appointed by the governor. Administration of the new DC plan would be contracted out to a private-sector vendor or vendors. The Board would, however, exercise contractual oversight and act as the trustees for the new DC plan.

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This report contains a summary table explaining current DB plan provisions and outlining the major provisions of the new DC plan as recommended by CPERS. After the summary table is the complete text of House Bill No. 79, which is the CPERS legislation to implement the recommendations. Finally, a copy of HB 90, which directed this study, is included as Appendix A.

STUDY PROCESS

In developing its recommendations, CPERS hired a consulting firm, Actuarial Sciences Associates, Inc. (ASA), which provided CPERS with reports, analyses, and recommendations. CPERS also sponsored a series of consultant-facilitated focus groups, which included PERS members as well as employers, explored 3 plan design options, including a split DB/DC hybrid plan, considered DB and DC plan benefit comparisons, and examined fiscal implications. CPERS also conducted numerous public hearings, including three statewide public meetings, each involving 19 video conference sites across Montana.

COMMITTEE BILL STATUS

CPERS's recommendations are contained in House Bill No.79, which has been preintroduced by Representative Matt Brainard. The 56th Legislature will convene on January 4, 1999. The latest legislative actions on HB 79 may be tracked through the Legislative Branch Internet site and bill status system. The Internet address for the Montana Legislative Automated Workflow System (LAWS) is as follows:

<http://laws.leg/state.mt.us/law/plsql/LAW0200WS.Startup>.

Or, the bill status system may be accessed through the state's main Internet home page at <http://state.mt.us>. Once at that site, click on "Legislative Info" and then click on "1999 Session (LAWS)".

FURTHER INFORMATION

For further information, or if you have questions about the following summary or HB 79, please contact Sheri Heffelfinger, Research Analyst, Montana Legislative Services Division, Room 138, State Capitol, Helena, MT, 59620.

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**Summary Table of the Current Defined Benefit Plan and
CPERS's Recommendations for a New Defined Contribution Plan**

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PERS - Plan Design as Proposed by HB 79

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Plan choices	<p><i>See HB 79, sec. 47</i></p> <p><u>All current PERS members</u> would be able to choose to transfer to the new DC plan or to remain in the DB plan. The choice of plans would have to be made within 12 months of the effective date of the new DC plan, which is contingent on when the PERS Board certifies that the plan is ready to become operational, but by no later than July 1, 2002.</p> <p><u>Inactive PERS members (i.e., not actively employed in a covered position) on the effective date of the DC plan</u>, if rehired into a PERS-covered position, would be able to elect to remain in the DB plan or to transfer to the DC plan within 12 months of their rehire date.</p> <p><u>New hires:</u> Members initially hired after the effective date of the DC plan would be enrolled in the DB plan and would have 12 months from their hire date to decide whether to transfer to the DC plan.</p> <p><u>Default plan:</u> A member would remain in the DB plan if the member fails to exercise a choice.</p> <p><u>University-system employees covered by PERS:</u> A university-system employee in a PERS-covered position who is eligible to join the DC plan would also be able to elect to transfer to the Optional Retirement Program (ORP), which is a different DC plan provided by the Board of Regents and currently administered by TIAA-CREF. An election to join the ORP would be a waiver of all rights under PERS. Member and employer contributions would be the amounts required under the ORP. <i>[see HB 79, sec. 48]</i></p> <p><u>One choice:</u> A choice to remain in the DB plan or to transfer to the DC plan (or to the ORP) would be a one-time, irrevocable choice for the duration of that employment cycle.</p>	

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Plan choices for employees who withdraw and come back	<p><i>See HB 79, sec. 49</i></p> <p><u>Less than a 24-month break in service:</u> A person who withdrew from either plan and was rehired into covered employment after a break in service of less than 24 months would have to rejoin the plan from which the member withdrew.</p> <p><u>A 24-month or more break in service:</u> A person who withdrew from either plan and was rehired into covered employment after a break in service of 24 months or more would have the same plan choice as a newly hired employee (i.e., initial enrollment in the DB plan with an option to transfer to the DC plan).</p> <p><u>Exception for former DC plan members:</u> A former DC plan member who received or is receiving some type of benefit or payment distribution from money that was formerly in the member's DC plan account would be required to rejoin the DC plan.</p> <p><u>"Buy back" of previous service in the DB plan:</u> An eligible former DC plan member who chose to join the DB plan after returning to covered employment would be able to "buy back" previous years of service by contributing to the DB plan the full actuarial cost for each year (or portion of a year) the person wanted to qualify.</p>	
Amount available to transfer to the DC plan	<p><i>See HB 79, sec. 50</i></p> <p><u>Current PERS members on the effective date of the DC plan</u> would be able to transfer all of the member's contributions and a specified portion of the employer contributions not used to pay past unfunded liabilities, plus interest credited at 8% annually. (See HB 79, sec. 50 for the table showing the portion of the employer contributions that may be transferred according to the member's years of service.)</p> <p><u>A new member,</u> who would be initially enrolled in the DB plan and given 12 months to decide whether to transfer, would be able to transfer the member's contributions made from the hire date and the employer contributions that would have been credited to the member's DC account if the member had elected the DC plan on the member's hire date, plus interest at the actuarially assumed rate of return on DB plan investments (currently 8%).</p>	

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Contribution amounts	<p>www.libtool.com.cn</p> <p><u>Required contributions:</u> The statutory contribution rate will be 6.9% of compensation for employees and 6.9% of covered payroll for employers, effective 7/1/99. (This is not a change.) These contribution amounts are not flexible.</p> <p><u>Allocation to an education program:</u> From employer contributions, 0.04% of covered payroll would be allocated to a fund to pay for educational programs for all PERS members. [see HB 79, sec. 41]</p> <p><u>Flexibility of contribution amounts outside of PERS:</u> Members participating in a voluntary 457 deferred compensation plan type or a 403(b) plan type may currently set their own contribution amounts to those plans. A 457 plan and a 403(b) plan allow for additional retirement savings outside of the PERS DB plan. Only educational institutions may offer a 403(b) plan.</p> <p>Currently, some local governments, the university system, and the state provide a 457 plan in which employees may voluntarily participate. The university system and some school districts also offer voluntary 403(b) plans. Although allowed, employers do not currently contribute to these plans.</p> <p><u>Need to coordinate:</u> Voluntary deferrals under a 457 plan and a 403(b) plan must be coordinated with each other to ensure total deferrals do not exceed the maximum allowed by the IRS.</p>	<p><u>Required contributions:</u> The statutory contribution rate will be 6.9% of compensation for employees and 6.9% of covered payroll for employers, effective 7/1/99. (The same as in the DB plan.) These contribution amounts are not flexible.</p> <p><u>Allocation of employer contributions:</u> The employer contributions to the DC plan would be allocated as follows: [See HB 79, sec. 53]</p> <p>-- 4.49% of compensation would be deposited to each member's DC plan account.</p> <p>-- 2.37% of compensation would be paid to the DB plan as the "plan choice rate" to pay for past unfunded liability obligations and to compensate the DB plan for increased DB plan costs resulting from PERS members selecting the DC plan.</p> <p>-- 0.04% of covered payroll would be deposited to an educational fund (the same as for DB plan employer contributions).</p> <p><u>Adjustments in the allocation of employer contributions:</u> The plan choice rate would be adjusted by the Board based on a statutorily defined method to assure the actuarial soundness of the DB plan and to assure that DC plan employer contributions allocated to the plan choice rate are not too high or too low. If the plan choice rate needs to be increased, the amount allocated to member accounts would be decreased accordingly. If the plan choice rate needs to be decreased, the amount allocated to member accounts would be increased accordingly. [see HB 79, sec. 54]</p>

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Vesting	<p><u>Right to employee contributions and interest:</u> A DB plan member is immediately 100% vested in the employee contributions plus interest at a rate set by the PER Board.</p> <p><u>5-year vesting to be eligible for future benefit:</u> A member must work in covered employment for 5 years to be vested with the right to a retirement benefit when the member attains retirement eligibility.</p> <p><u>Employer contributions must stay in plan:</u> If a vested or nonvested member chooses to withdraw from the plan, the member may take out only the employee contributions plus the Board-set interest, which fluctuates, but is currently about 5%.</p>	<p><i>See HB 79, sec. 52</i></p> <p><u>Right to employee contributions and investment earnings on those contributions:</u> A DC plan member is immediately 100% vested in the member's contributions and the investment earnings on those contributions.</p> <p><u>5-year vesting for employer contributions and investment earnings on those contributions:</u> A DC plan member would not be vested with the right to take out employer contributions and investment earnings on those contributions until the member has worked at least 5 years in covered employment. The member would forfeit the employer's contributions and investment earnings if the member leaves covered employment before completing 5 years of service.</p> <p><u>Membership termination required:</u> A nonvested member leaving covered employment would be required to remove his or her contributions and investment earnings from the DC plan. <i>[see HB 79, sec. 56]</i> If a vested or nonvested member's account balance is less than a specified minimum when the member leaves covered employment, the member would also be required to terminate plan membership. <i>[see HB 79, sec. 60]</i></p> <p><u>Allocation of forfeitures:</u> The PER Board would allocate forfeited employer contributions and earnings toward the plan choice rate payments to the DB plan to pay off the past DB plan unfunded liabilities. <i>[see HB 79, sec.50(3)]</i></p>

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Investment control	<p>www.libtool.com.cn</p> <p><u>The Board of Investments</u> manages the investment of the DB plan assets.</p> <p><u>Investment earnings in a DB plan:</u> The benefit amount is defined by a statutory formula and does not fluctuate with market gains or losses. In estimating the cost of defined benefits, the plan actuary makes certain economic and demographic assumptions, including an assumption about overall average rates of return on investments. Currently, the assumed average rate of return over time is 8%.</p> <p><u>Current funding status:</u> Based on the plan's 1998 valuation, almost 92% of the plan's benefit obligations are fully funded by current assets, leaving 8% that cannot be funded using current assets. Based on expected future contribution rates and investment earnings, the unfunded portion of the liabilities may be paid off (amortized) in about 13 years. (The amortization schedule fluctuates with actuarial gains and losses, which include investment gains and losses.)</p>	<p><i>See HB 79, sec. 55</i></p> <p><u>Self-directed investments:</u> DC plan members would direct investment of their account balances and have a set menu of investment alternatives from which to choose. Investment choices offered would be determined by the Board in accordance with HB 79 provisions. Member account balances would fluctuate with the market performance of the investment alternatives selected by the member.</p> <p><u>Consult with licensed advisors:</u> Members would be advised to consult licensed financial advisors when selecting investments. Personnel officers would not be expected to and cannot legally provide investment counseling.</p> <p><u>Control of employer contributions:</u> Nonvested and vested DC plan members would be able to control investment of the employer contributions. Employer contributions and earnings would be tracked separately from employee contributions and earnings.</p>
Education program	<p><i>See HB 79, sec. 41</i></p> <p>A portion of the employer contributions (0.04% of compensation) in both plans would be deposited to a fund for educational programs. The Board would coordinate educational programs to help members decide which plan to choose. On-going programs would provide DB plan members with information about the DB plan, while DC plan members would be given information about how to select appropriate investments and manage their individual portfolios. The educational programs would also provide members in each plan with information about how to plan for retirement and coordinate their PERS savings with other savings plans outside of PERS, such as the state's 457 deferred compensation plan.</p>	

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Portability into the plan	<p>Currently, vested DB members may purchase (i.e., qualify) certain types of public service performed outside of PERS for full cost and thus enhance their benefit at retirement.</p>	<p><i>See HB 79, sec. 51</i></p> <p>The DC plan would accept rollovers from other qualified plans such as another 401(a) plan in the public sector or a 401(k) plan in the private-sector.</p>
Retirement eligibility and benefit amounts	<p><u>Eligibility for normal retirement:</u> A member is eligible to retire with normal, unreduced benefits:</p> <ul style="list-style-type: none"> -- at age 60 with 5 years of service; or -- with at least 30 years of service; or -- at age 65 regardless of service if the member reaches age 65 while actively employed in a covered position. <p><u>Benefit amount:</u> The member's retirement benefit will be the greater of:</p> <p style="padding-left: 40px;">the defined benefit formula: $1/56 \times \text{yrs of service} \times \text{final avg. salary}$ or the money purchase formula: the actuarial equivalent of double the member's contributions plus the board-set interest, annuitized for life.</p> <p><u>Eligibility for early retirement (reduced benefit):</u> at age 50, or at 25 years of service regardless of age.</p>	<p><u>Eligibility for retirement:</u> Members would be able to start accessing account balances any time after leaving covered employment.</p> <p><u>Note:</u> Taxes and penalties on distributions vary. Members would be advised to consult their accountants or licensed financial advisors before taking money out of their accounts. Distributions prior to age 59 ½ may be subject to a 10% federal tax penalty for early withdrawal.</p> <p><u>Benefit amount:</u> Distribution amounts would depend on the payout options selected by the member and on the member's account balance.</p>

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Portability out	<p>www.libtool.com.cn</p> <p>At termination of covered employment, a DB plan member wishing to withdraw from the plan is entitled to take out employee contributions plus the board-set interest in one of the following ways:</p> <p>(1) <u>"cash out"</u> of the plan i.e., take a taxable lump sum distribution.</p> <p>(2) <u>transfer the money to another employer's plan</u>, which would typically be a 401(k) plan in the private-sector or a 401(a) plan in the public sector, if that plan accepted the transfer.</p> <p>(3) <u>roll the money into an IRA</u>. (Note: only a <i>direct</i> rollover is protected against a 20% federal tax penalty.)</p>	<p><i>See HB 79, sec. 56</i></p> <p>At termination of covered employment, an employee wishing to withdraw from the plan would be entitled to the employee's account balance* and would be able to do one or any combination of the following:</p> <p>(1) <u>"cash distribution"</u> i.e., a taxable lump sum distribution.</p> <p>(2) <u>transfer money to another employer's plan</u>, which would typically be a 401(k) plan in the private-sector or a 401(a) plan in the public sector, if that plan accepts the transfer.</p> <p>(4) <u>roll the money into an IRA</u>. (Note: only a <i>direct</i> rollover is protected against a 20% federal tax penalty.)</p> <p>*Account balances:</p> <p><i>Nonvested</i> member account balances would be employee contributions plus investment earnings.</p> <p><i>Vested</i> member account balances would be the employee and employer contributions and all investment earnings.</p>

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Distribution options within the plan	<p>A retiring DB plan member has a specified monthly benefit for life, but is offered options on beneficiary benefits (which affect the monthly benefit amount paid to the member):</p> <ul style="list-style-type: none"> (1) no benefit for a beneficiary; or (2) a life-time benefit for the beneficiary; or (3) ½ the member’s benefit amount for the life of the beneficiary; or (4) either a 10-year term-certain guarantee or a 20-year term-certain guarantee. (This provides, for example, that if the member chooses the 20-year term-certain guarantee and the member died after 15 years, then the beneficiary would get the full benefit amount for the remaining 5 years.) <p><u>GABA</u>: All benefits paid are, after three years, covered by the 1.5% Guaranteed Annual Benefit Adjustment, i.e, an automatic annual increase in the monthly benefit.</p>	<p><i>See HB 79, sec. 57</i></p> <p>After leaving covered employment, a vested DC plan member who remains in the DC plan would be able to choose among the following:</p> <ul style="list-style-type: none"> (1) a purchase any of the retirement benefits offered in the DB plan, which include the GABA (although benefit payments would not start until the member reaches retirement eligibility as defined for the DB plan members); or (2) a choice from among various distribution options that the PERS Board may negotiate with a private-sector vendor. <p><u>Note</u>: The IRS requires minimum regular distributions from member accounts after the member has attained age 70 ½, unless the member is actively employed. The Board would provide for a “default rule” so that distributions comply with IRS requirements.</p>

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Return to work	<p>www.libtool.com.cn</p> <p>For a member who retires under the DB plan, who is under age 65, and who returns to covered employment for more than 640 hours in any calendar year, the member's retirement benefit is reduced by \$1 for every \$1 earned. If the member is age 65 or older, the member is either subject to the 640-hour limitation or may earn up to what the member's final average salary was when the member retired (adjusted for inflation), whichever allows the most earnings. A retiree returning to covered employment may elect to become an active member and defer further retirement payments. A retiree who returns to active employment in a covered position and who is 70 ½ years of age or older is not subject to these restrictions.</p>	<p><u>No in-service distributions allowed:</u> A DC plan member who is less than 70 ½ years of age and who returns to active employment in a covered position may not receive distributions from the DC plan. <i>[See HB 79, sec. 57(3)]</i></p>
Disability benefits	<p>An active member with 5 or more years of service who becomes totally and permanently disabled is eligible for a disability retirement. The amount of the disability benefit depends on the member's date of hire. For members hired after February 24, 1991, (or for a member who has made an election for this coverage) the benefit is calculated using the DB plan formula: $1/56 \times \text{yrs of service} \times \text{final avg. salary}$</p>	<p>None. A DC plan member would be able to voluntarily purchase a supplementary disability plan, which may or may not be coordinated through the employer's payroll system.</p>

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Death benefits	<p>Upon the death of an actively employed member, the designated beneficiary is entitled to:</p> <p>(1) a lump-sum benefit consisting of one month's salary, plus the member's accumulated contributions and interest; or</p> <p>(2) the above amount annuitized for the life of the beneficiary; or</p> <p>(3) if the deceased member was vested, elect a monthly benefit based on the salary, service, and age of the member at the time of death.</p>	<p>See HB 79, sec. 58</p> <p>If a member dies, the member's beneficiary would be entitled to:</p> <p>(1) a lump-sum distribution of the member's account balance; or</p> <p>(2) a benefit purchased from the DB plan with the member's account balance; or</p> <p>(3) a rollover of the account balance to either an Individual Retirement Account or Annuity.</p>
Health plan benefits	<p>By law, a DB plan member who retires may continue to participate in the employer's group health insurance plan if the member pays the full premium, subject to certain restrictions. (See section 2-18-704, MCA.) Administrative rules covering state agencies have allowed members who are eligible to retire to remain on the state health plan even if they have not yet received a retirement benefit. In effect, therefore, a DB plan member with at least 5 years of service and who is at least age 50 (i.e., early retirement eligibility) is eligible to remain on the state plan after leaving covered employment.</p>	<p>See HB 79, sec. 2, amending section 2-18-704, MCA</p> <p>Same as for the DB plan participants. After leaving covered employment, a DC plan member with at least 5 years of service and who is at least 50 years of age while in covered employment would be able to continue to participate in the employer's group health benefit plan if the member pays the full premium, subject to certain restrictions provided by law.</p>
Loans	<p>No loans allowed.</p>	<p>See HB 79, sec. 59</p> <p>After 5 years of covered employment, a member would be able to take a loan from the member's account of up to ½ of the member's account balance, but no more than \$50,000. Loans would have to be paid back within 5 years with interest based on the prime rate. For actively employed members, repayment would be by automatic payroll deduction.</p>

Issues and Plan Features	Defined Benefit (DB) plan (Current PERS)	Defined Contribution (DC) Plan
Part-time employees and optional membership	<p style="text-align: center;">www.libtool.com.cn</p> <p><u>For part-time employees:</u> Membership is determined based on the number of hours worked. An employee working in a covered position for 960 hours or more in one year must become a member of PERS. (Prior to that time, membership is optional.) When an employee becomes a member, the member has the same plan choices as a newly hired employee, i.e., after initial enrollment in the DB plan, the member would have 12 months to choose whether to stay in the DB plan or to transfer to the DC plan.</p> <p><u>For employees with optional membership under current law:</u> Certain types of employees, such as state legislators, other state and local elected officials, and employees appointed by the governor have the option, under current law, of joining PERS at any time during their employment (see section 19-3-412, MCA). When an employee elects to join, the employee can qualify previous service by paying the appropriate employee contribution amounts for the past service and the employer is then obligated to pay the employer's contributions for that past service. However, the IRS has raised a "red flag" on this on-going optional membership provision and the Board, to comply with IRS regulations, is introducing legislation that would require these employees to make a one-time decision within a specified time period. If the employee opts in, as a member of PERS, the employee would have the same plan choices as a newly hired employee (i.e., be initially enrolled in the DB plan and have 12 months to elect to transfer to the DC plan).</p>	
Costs	<p>New administrative costs would be incurred by the PER Board to modify existing information management and data systems to accommodate new DC plan reporting and tracking requirements. The CPERS bill is being introduced with a general fund appropriation of \$2.93 million, \$2.48 million of which would be repaid over time through administrative fees on the DC plan. On-going administrative costs would be paid through administrative fees on the DC plan as negotiated between the Board and the plan vendor or vendors. <i>[HB 79, sec. 68]</i></p>	
Implementation schedule and plan effective date	<p>As introduced, the CPERS bill sets out an implementation schedule for accomplishing the tasks related to contracting for DC plan administrative services, modifying the reporting and information management systems, and applying for an IRS determination about whether the DC plan complies with IRS regulations. A temporary advisory council would assist the PERS Board in selecting the menu of investment options to be offered in the DC plan. The schedule would allow the PERS Board to determine when the DC plan is ready to become operational. An implementation team and a legislative oversight committee would also assist in the implementation process. When the Board certifies to the governor that the plan is ready, the DC plan provisions would then become effective. The CPERS bill states that the DC plan must become effective by no later than July 1, 2002. The 2001 Legislature would, therefore, be able to take a "second look" at the DC plan provisions and make any necessary adjustments to statutory provisions. <i>[see HB 79, sec. 61]</i></p>	

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Section 1. Section 2-15-1009, MCA, is amended to read:
 "2-15-1009. Public employees' retirement board -- terms -- allocation. 2

Section 2. Section 2-18-704, MCA, is amended to read:
 "2-18-704. Mandatory provisions. 3

Section 3. Section 17-6-201, MCA, is amended to read:
 "17-6-201. (Temporary) Unified investment program -- general provisions. 5

Section 4. Section 19-2-302, MCA, is amended to read:
 "19-2-302. Applicability. 9

Section 5. Section 19-2-303, MCA, is amended to read:
 "19-2-303. Definitions. 9

Section 6. Section 19-2-401, MCA, is amended to read:
 "19-2-401. Location of board -- jurisdiction and venue for judicial review -- quorum --
 officers and employees. 14

Section 7. Section 19-2-403, MCA, is amended to read:
 "19-2-403. Powers and duties of board. 14

Section 8. Section 19-2-405, MCA, is amended to read:
 "19-2-405. Employment of actuary -- biennial investigation and valuation. 15

Section 9. Section 19-2-406, MCA, is amended to read:
 "19-2-406. Determination of disability by board -- compliance with federal law --
 conversion to service retirement benefit -- rules. 16

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Section 10. Section 19-2-407, MCA, is amended to read:

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"19-2-407. Report by division to governor. 16

Section 11. Section 19-2-408, MCA, is amended to read:

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Section 12. Section 19-2-409, MCA, is amended to read:

"19-2-409. ~~Systems~~ Plans to be funded on actuarially sound basis -- definition. . . 18

Section 13. Section 19-2-501, MCA, is amended to read:

"19-2-501. Pension trust funds established. 18

Section 14. Section 19-2-503, MCA, is amended to read:

"19-2-503. Management of pension trust funds. 18

Section 15. Section 19-2-504, MCA, is amended to read:

"19-2-504. Investment of pension trust funds. 18

Section 16. Section 19-2-505, MCA, is amended to read:

"19-2-505. Restrictions on use of funds. 19

Section 17. Section 19-2-603, MCA, is amended to read:

"19-2-603. Reinstatement after withdrawal of contributions. 19

Section 18. Section 19-2-902, MCA, is amended to read:

"19-2-902. Frequency of benefit payments. 20

Section 19. Section 19-2-906, MCA, is amended to read:

"19-2-906. Limitations on disability or survivorship benefits. 20

Section 20. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees -- family law orders -- rulemaking. 20

Section 21. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit -- rulemaking. 22

Section 22. Section 19-2-909, MCA, is amended to read:

"19-2-909. Execution or withholding for support obligation -- rulemaking. 23

Section 23. Section 19-2-1001, MCA, is amended to read:

"19-2-1001. Maximum benefit and contribution limitation. 24

Section 24. Section 19-2-1002, MCA, is amended to read:

"19-2-1002. Vesting of retirement benefits upon termination of system plan. 24

Section 25. Section 19-2-1003, MCA, is amended to read:

"19-2-1003. Transfer of dormant, nonvested member-accumulated contributions. 25

Section 26. Section 19-2-1005, MCA, is amended to read:

"19-2-1005. Compensation limit. 25

Section 27. Section 19-2-1006, MCA, is amended to read:

"19-2-1006. Use of forfeitures. 25

Section 28. Section 19-2-1007, MCA, is amended to read:

"19-2-1007. Required distributions. 25

Section 29. Section 19-3-103, MCA, is amended to read:

"19-3-103. Retirement system created -- system to consist of two plans. 26

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2 **Section 30.** Section 19-3-108, MCA, is amended to read:

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5 **Section 31.** Section 19-3-201, MCA, is amended to read:

6 "19-3-201. **Contracts with political subdivisions.** 27

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8 **Section 32.** Section 19-3-203, MCA, is amended to read:

9 "19-3-203. **Conversion of local or state retirement plan.** 28

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11 **Section 33.** Section 19-3-315, MCA, is amended to read:

12 "19-3-315. **Member's contribution to be deducted.** 29

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14 **Section 34.** Section 19-3-316, MCA, is amended to read:

15 "19-3-316. **Employer contribution rates.** 30

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17 **Section 35.** Section 19-3-401, MCA, is amended to read:

18 "19-3-401. **Membership -- inactive vested members -- inactive nonvested members.**
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21 **Section 36.** Section 19-21-102, MCA, is amended to read:

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HOUSE BILL NO. 79

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BY REQUEST OF THE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; ESTABLISHING A DEFINED CONTRIBUTION PLAN WITHIN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND SPECIFYING THE PLAN'S PROVISION OF RIGHTS, BENEFITS, AND FEATURES; ELIMINATING CERTAIN INVESTMENT RESTRICTIONS IN THE UNIFIED INVESTMENT PROGRAM; PROVIDING FOR THE POWERS AND DUTIES OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD IN IMPLEMENTING AND ADMINISTERING THE NEW PLAN; ALLOWING CURRENT AND NEW SYSTEM MEMBERS TO CHOOSE WHETHER TO JOIN THE NEW DEFINED CONTRIBUTION PLAN OR STAY IN THE DEFINED BENEFIT PLAN; SPECIFYING PLAN CHOICE, MEMBERSHIP, AND VESTING CRITERIA; ALLOWING RETIREMENT SYSTEM MEMBERS EMPLOYED BY THE UNIVERSITY SYSTEM TO CHOOSE THE OPTIONAL RETIREMENT PLAN; PROVIDING FOR ACTUARIAL FUNDING OF DEFINED BENEFIT PLAN UNFUNDED LIABILITIES AND PLAN CHOICE COSTS; ESTABLISHING CRITERIA FOR THE INVESTMENT ALTERNATIVES THAT MAY BE OFFERED IN THE NEW PLAN; SPECIFYING THE PAYOUT AND BENEFIT OPTIONS AVAILABLE WITHIN THE DEFINED CONTRIBUTION PLAN; PROVIDING FOR DEATH BENEFITS AND A MEMBER LOAN FEATURE IN THE NEW PLAN; REQUIRING AND SPECIFYING THE COMPONENTS OF MEMBER EDUCATIONAL PROGRAMS; ESTABLISHING AN IMPLEMENTATION SCHEDULE; PROVIDING FOR AN IMPLEMENTATION TEAM, ADVISORY COUNCIL, AND OVERSIGHT COMMITTEE; PROVIDING FOR PAYMENT OF CERTAIN LOCAL GOVERNMENT ADMINISTRATIVE EXPENSES; REQUIRING THAT THE PUBLIC EMPLOYEES' RETIREMENT BOARD FILE FOR AN INTERNAL REVENUE SERVICE DETERMINATION; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 2-15-1009, 2-18-704, 17-6-201, 19-2-302, 19-2-303, 19-2-401, 19-2-403, 19-2-405, 19-2-406, 19-2-407, 19-2-408, 19-2-409, 19-2-501, 19-2-503, 19-2-504, 19-2-505, 19-2-603, 19-2-902, 19-2-906, 19-2-907, 19-2-908, 19-2-909, 19-2-1001, 19-2-1002, 19-2-1003, 19-2-1005, 19-2-1006, 19-2-1007, 19-3-103, 19-3-108, 19-3-201, 19-3-203, 19-3-315, 19-3-316, 19-3-401, 19-21-102, 19-21-201, 19-21-202, AND 19-21-203, MCA; AND PROVIDING EFFECTIVE DATES AND TERMINATION DATES."

WHEREAS, House Bill No. 90 of the 55th Legislature required the Committee on Public Employee

1 Retirement Systems (CPERS) to design a new or modified public employees' retirement plan containing
 2 certain specified features; and

3 WHEREAS, House Bill No. 90 required that the new or modified plan increase portability of
 4 member contributions, increase flexibility to allow members to choose among investment options, and
 5 retain a plan component that offers a specified benefit in retirement; and

6 WHEREAS, House Bill No. 90 required that the CPERS establish an implementation schedule for
 7 the new or modified plan, provide for an educational program, and present any implementing legislation;
 8 and

9 WHEREAS, the CPERS contracted with a benefits consulting firm and conducted a thorough and
 10 broad-based study during the 1997-98 interim to determine the design of the new or modified retirement
 11 plan; and

12 WHEREAS, the study involved numerous focus groups from across Montana, including members
 13 of retirement systems, employers, plan administrators, and public officials; and

14 WHEREAS, the CPERS commissioned and considered reports and analyses by the contracted
 15 consulting firm; and

16 WHEREAS, the CPERS has concluded the study required by House Bill No. 90 and recommends
 17 that the current public employees' retirement system (PERS) consist of two retirement plans, the current
 18 defined retirement benefit plan and a new defined contribution retirement plan; and

19 WHEREAS, current and new members of the PERS may choose between either the defined benefit
 20 plan or the defined contribution plan.

21

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

23

24 Section 1. Section 2-15-1009, MCA, is amended to read:

25 "2-15-1009. Public employees' retirement board -- terms -- allocation. (1) There is a public
 26 employees' retirement board.

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

28 (a) three public employees who are active members of a public retirement system (not more than
 29 one of these members may be an employee of the same department and at least one of these members
 30 must, no later than July 1, 2003, be a member of the defined contribution plan created pursuant to

1 [sections 42 through 64]);

2 (b) ~~one retired public em~~ployee who is an inactive member of the public employees' retirement
3 system; ~~and~~

4 (c) two members at large; and

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

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

8 (4) The board is allocated to the department for administrative purposes only as prescribed in
9 2-15-121. The board shall hire necessary employees as provided in 19-2-404.

10 (5) Members of the board must be compensated and receive travel expenses as provided for in
11 2-15-124."

12
13 **Section 2.** Section 2-18-704, MCA, is amended to read:

14 **"2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must
15 contain provisions that permit:

16 (a) the member of a group who retires from active service under the appropriate retirement
17 provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan
18 provided in [sections 42 through 64], a member with at least 5 years of service and who is at least age
19 50 while in covered employment to remain a member of the group until the member becomes eligible for
20 medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the
21 member is a participant in another group plan with substantially the same or greater benefits at an
22 equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to
23 participate in another group plan with substantially the same or greater benefits at an equivalent cost;

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

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

1 employment of a surviving parent or legal guardian.

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

4 (a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);
5 (b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and
6 (c) continued membership in the group by anyone eligible under the provisions of this section,
7 notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

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

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

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

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

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

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

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

24 (4) (a) A state insurance contract or plan must contain provisions that permit continued
25 membership in the state's group plan by a member of the judges' retirement system who leaves judicial
26 office but continues to be an inactive vested member of the judges' retirement system as provided by
27 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end
28 of the judge's judicial service of the judge's choice to continue membership in the group plan.

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

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

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

4 (iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C.
5 1395, as amended.

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

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

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

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

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

19
20 **Section 3.** Section 17-6-201, MCA, is amended to read:

21 "17-6-201. (Temporary) Unified investment program -- general provisions. (1) The unified
22 investment program directed by Article VIII, section 13, of the Montana constitution to be provided for
23 public funds must be administered by the board of investments in accordance with the prudent expert
24 principle, which requires an investment manager to:

25 (a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances
26 then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with
27 like matters exercises in the conduct of an enterprise of a like character with like aims;

28 (b) diversify the holdings of each fund within the unified investment program to minimize the risk
29 of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do
30 so; and

1 (c) discharge the duties solely in the interest of and for the benefit of the funds forming the
2 unified investment program.

3 (2) (a) Retirement funds may be invested in common stocks of any corporation, ~~except that an~~
4 ~~investment may not be made at any time that would cause the book value of the investments in a~~
5 ~~retirement fund to exceed 50% of the book value of the fund or that would cause the stock of one~~
6 ~~corporation to exceed 2% of the book value of the retirement fund.~~

7 (b) Other public funds may not be invested in private corporate capital stock. "Private corporate
8 capital stock" means only the common stock of a corporation.

9 (3) (a) This section does not prevent investment in any business activity in Montana, including
10 activities that continue existing jobs or create new jobs in Montana.

11 (b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds
12 in venture capital companies. Whenever possible, preference should be given to investments in those
13 venture capital companies that demonstrate an interest in making investments in Montana.

14 (c) In discharging its duties, the board shall consider the preservation of purchasing power of
15 capital during periods of high monetary inflation.

16 (d) The board may not make a direct loan to an individual borrower. The purchase of a loan or
17 a portion of a loan originated by a financial institution is not considered a direct loan.

18 (4) The board has the primary authority to invest state funds. Another agency may not invest
19 state funds unless otherwise provided by law. The board shall direct the investment of state funds in
20 accordance with the laws and constitution of this state. The board has the power to veto investments
21 made under its general supervision.

22 (5) The board shall:

23 (a) assist agencies with public money to determine if, when, and how much surplus cash is
24 available for investment;

25 (b) determine the amount of surplus treasury cash to be invested;

26 (c) determine the type of investment to be made;

27 (d) prepare the claim to pay for the investment; and

28 (e) keep an account of the total of each investment fund and of all the investments belonging to
29 the fund and a record of the participation of each treasury fund account in each investment fund.

30 (6) The board may:

1 (a) execute deeds of conveyance transferring real property obtained through investments. Prior
2 to the transfer of real property directly purchased and held as an investment, the board shall obtain an
3 appraisal by a qualified appraiser.

4 (b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101
5 and 17-6-105;

6 (c) direct the sale of securities in the program at their full and true value when found necessary
7 to raise money for payments due from the treasury funds for which the securities have been purchased;

8 (d) expend funds needed to cover costs of necessary repairs to property owned by the board as
9 an investment. Repairs that cost in excess of \$2,500 must be bid, and the bid must be awarded in
10 compliance with existing state law and regulations. Emergency repairs may be made by the board without
11 bid if approved by the state architect.

12 (7) The cost of administering and accounting for each investment fund must be deducted from
13 the income from each fund.

14 (8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the
15 department of commerce for the costs of administering programs established under Title 90, chapter 3,
16 that are not covered by payback funds available from the account established in 90-3-305.

17 **17-6-201. (Effective July 1, 1999) Unified investment program -- general provisions.** (1) The
18 unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided
19 for public funds must be administered by the board of investments in accordance with the prudent expert
20 principle, which requires an investment manager to:

21 (a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances
22 then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with
23 like matters exercises in the conduct of an enterprise of a like character with like aims;

24 (b) diversify the holdings of each fund within the unified investment program to minimize the risk
25 of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do
26 so; and

27 (c) discharge the duties solely in the interest of and for the benefit of the funds forming the
28 unified investment program.

29 (2) (a) Retirement funds may be invested in common stocks of any corporation, ~~except that an~~
30 ~~investment may not be made at any time that would cause the book value of the investments in a~~

1 ~~retirement fund to exceed 50% of the book value of the fund or that would cause the stock of one~~
2 ~~corporation to exceed 2% of the book value of the retirement fund.~~
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3 (b) Other public funds may not be invested in private corporate capital stock. "Private corporate
4 capital stock" means only the common stock of a corporation.

5 (3) (a) This section does not prevent investment in any business activity in Montana, including
6 activities that continue existing jobs or create new jobs in Montana.

7 (b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds
8 in venture capital companies. Whenever possible, preference should be given to investments in those
9 venture capital companies that demonstrate an interest in making investments in Montana.

10 (c) In discharging its duties, the board shall consider the preservation of purchasing power of
11 capital during periods of high monetary inflation.

12 (d) The board may not make a direct loan to an individual borrower. The purchase of a loan or
13 a portion of a loan originated by a financial institution is not considered a direct loan.

14 (4) The board has the primary authority to invest state funds. Another agency may not invest
15 state funds unless otherwise provided by law. The board shall direct the investment of state funds in
16 accordance with the laws and constitution of this state. The board has the power to veto investments
17 made under its general supervision.

18 (5) The board shall:

19 (a) assist agencies with public money to determine if, when, and how much surplus cash is
20 available for investment;

21 (b) determine the amount of surplus treasury cash to be invested;

22 (c) determine the type of investment to be made;

23 (d) prepare the claim to pay for the investment; and

24 (e) keep an account of the total of each investment fund and of all the investments belonging to
25 the fund and a record of the participation of each treasury fund account in each investment fund.

26 (6) The board may:

27 (a) execute deeds of conveyance transferring real property obtained through investments. Prior
28 to the transfer of real property directly purchased and held as an investment, the board shall obtain an
29 appraisal by a qualified appraiser.

30 (b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101

1 and 17-6-105;

2 (c) ~~direct the sale of securities~~ securities in the program at their full and true value when found necessary
3 to raise money for payments due from the treasury funds for which the securities have been purchased;

4 (d) expend funds needed to cover costs of necessary repairs to property owned by the board as
5 an investment. Repairs that cost in excess of \$2,500 must be bid, and the bid must be awarded in
6 compliance with existing state law and regulations. Emergency repairs may be made by the board without
7 bid if approved by the state architect.

8 (7) The cost of administering and accounting for each investment fund must be deducted from
9 the income from each fund."

10
11 Section 4. Section 19-2-302, MCA, is amended to read:

12 "19-2-302. **Applicability.** ~~This~~ Except as otherwise provided in this title, this chapter applies to
13 the provisions and administration of the retirement systems and plans within the systems under chapters
14 3, 5 through 9, and 13 of this title."

15
16 Section 5. Section 19-2-303, MCA, is amended to read:

17 "19-2-303. **Definitions.** Unless the context requires otherwise, for each of the retirement systems
18 subject to this chapter, the following definitions apply:

19 (1) "Account balance" means all contributions, income, and other assets in a retirement account
20 that have, pursuant to [section 52], vested to a member of the defined contribution plan.

21 ~~(2)~~(2) "Accumulated contributions" means the sum of all the regular and any additional
22 contributions made by a member in a ~~system~~ defined benefit plan, together with the regular interest on
23 the contributions.

24 ~~(2)~~(3) "Active member" means a member who is a paid employee of an employer, is making the
25 required contributions, and is properly reported to the division for the most current reporting period.

26 ~~(3)~~(4) "Actuarial cost" means the amount determined by the board in a uniform and
27 nondiscriminatory manner to represent the present value of the benefits to be derived from the additional
28 service to be credited based on the most recent actuarial valuation for the system and the age, years until
29 retirement, and current salary of the member.

30 ~~(4)~~(5) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of

1 the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8%
 2 compounded annually.

3 ~~(5)~~(6) "Actuarial liabilities" means the excess of the present value of all benefits payable under
 4 a defined benefit retirement system plan over the present value of future normal costs in that retirement
 5 system plan.

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

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

9 ~~(8)~~(9) "Annuity" means:

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

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

15 ~~(9)~~(10) "Benefit" means:

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

18 (b) a payment or distribution under the defined contribution retirement plan for the exclusive
 19 benefit of a plan member or the member's beneficiary or a benefit purchased under [section 57].

20 ~~(10)~~(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

21 ~~(11)~~(12) "Contingent annuitant" means a person designated to receive a continuing monthly
 22 benefit after the death of a retired member.

23 (13) "Covered employment" means employment in a covered position.

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

26 ~~(12)~~(15) "Credited service" or "service credit" means the periods of time for which the required
 27 contributions have been made to a retirement system plan and that are used to calculate service or
 28 disability retirement or survivorship benefits under a defined benefit retirement system plan.

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

1 (17) "Defined contribution retirement plan" or "defined contribution plan" means the plan within
2 the public employees' retirement system established in 19-3-103 that is provided for in (sections 42
3 through 64) and that is not a defined benefit plan.

4 ~~(13)~~(18) "Department" means the department of administration.

5 ~~(14)~~(19) "Designated beneficiary" means the person designated by a member or payment recipient
6 to receive any survivorship benefits ~~or~~, lump-sum payments, or benefit from a retirement account upon
7 the death of the member or payment recipient, including annuities derived from the benefits or payments.

8 ~~(15)~~(20) "Disability" means a total inability of the member to perform the member's duties by
9 reason of physical or mental incapacity. The disability must be incurred while the member is an active
10 member and must be one of permanent duration or of extended and uncertain duration, as determined
11 by the board on the basis of competent medical opinion.

12 ~~(16)~~(21) "Division" means the public employees' retirement division of the department of
13 administration.

14 ~~(17)~~(22) "Employee" means a person who is employed by an employer in any capacity and whose
15 salary is paid by the employer.

16 ~~(18)~~(23) "Employer" means a governmental entity participating in a retirement system enumerated
17 in 19-2-302 on behalf of its eligible employees.

18 ~~(19)~~(24) "Essential elements of the position" means fundamental job duties. An element may be
19 considered essential because of but not limited to the following factors:

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

23 ~~(20)~~(25) "Fiscal year" means any year commencing with July 1 and ending the following June 30.

24 ~~(21)~~(26) "Inactive member" means a member who is not an active or retired member.

25 ~~(22)~~(27) "Member" means ~~any~~ either:

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

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

30 ~~(23)~~(28) "Membership service" or "years of service" means the periods of service that are used

1 to determine eligibility for retirement or other benefits.

2 ~~(24)~~(29) "Normal cost" or "future normal cost" means an amount calculated under an actuarial
 3 cost method required to fund accruing benefits for members of a defined benefit retirement system plan
 4 during any year in the future. Normal cost does not include any portion of the supplemental costs of a
 5 retirement system plan.

6 ~~(25)~~(30) "Pension" means benefit payments for life derived from contributions to a system
 7 retirement plan made from state- or employer-controlled funds.

8 ~~(26)~~(31) "Pension trust fund" means a fund established to hold the contributions, income, and
 9 assets of a retirement system or plan in public trust.

10 ~~(27)~~(32) "Plan choice rate" means the amount of the employer contribution as a percentage of
 11 payroll covered by the defined contribution plan members that is allocated to the public employees'
 12 retirement system's defined benefit plan pursuant to [section 53] and that is adjusted by the board
 13 pursuant to [section 54] to actuarially fund the unfunded liabilities and the normal cost rate changes in
 14 a defined benefit plan resulting from member selection of the defined contribution plan.

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

17 ~~(28)~~(34) "Regular interest" means interest at the rate set from time to time by the board.

18 ~~(29)~~(35) "Retirement" or "retired" means the status of a member who has terminated from service
 19 and has received and accepted a retirement benefit from a retirement system plan.

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

23 ~~(30)~~(37) "Retirement benefit" means:

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

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

28 ~~(31)~~(38) "Retirement system" or "system" means one of the public employee retirement systems
 29 enumerated in 19-2-302.

30 ~~(32)~~(39) "Service" means employment of an employee in a position covered by a retirement

1 system.

2 ~~(33)(40)~~ "Statutory beneficiary" means the surviving spouse or dependent child or children of a
3 member of the highway patrol officers', municipal police officers', or firefighters' unified retirement
4 system who are statutorily designated to receive benefits upon the death of the member.

5 ~~(34)(41)~~ "Supplemental cost" means an element of the total actuarial cost of a defined benefit
6 retirement ~~system~~ plan arising from benefits payable for service performed prior to the inception of the
7 retirement ~~system~~ plan or prior to the date of contribution rate increases, changes in actuarial
8 assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest
9 on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement
10 ~~system~~ plan.

11 ~~(35)(42)~~ "Survivorship benefit" means payments for life to the statutory or designated beneficiary
12 of a deceased member who died while in service under a defined benefit retirement ~~system~~ plan.

13 ~~(36)(43)~~ "Termination of employment" or "termination of service" means that the member has
14 severed the employment relationship with the employer and has been paid all compensation due upon
15 termination of employment, including but not limited to payment of accrued annual leave credits, as
16 provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes
17 of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which
18 the board was not party is not a payment due upon termination.

19 ~~(37)(44)~~ "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined
20 benefit retirement ~~system's~~ plan's actuarial liabilities at any given point in time over the value of its cash
21 and investments on that same date.

22 ~~(38)(45)~~ "Vested member" or "vested" means:

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

26 (b) with respect to the defined contribution plan, a member or the status of a member who,
27 pursuant to [section 52], is entitled to employer contributions and income on those contributions in the
28 member's retirement account.

29 ~~(39)(46)~~ "Written application" means a written instrument duly executed and filed with the board
30 and containing all information required by the board, including ~~such~~ proofs of age ~~as~~ that the board

1 considers necessary."

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3 Section 6. Section 19-2-401, MCA, is amended to read:

4 "19-2-401. Location of board -- jurisdiction and venue for judicial review -- quorum -- officers and
5 employees. (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial
6 review of final administrative decisions of the board are in the first judicial district, Lewis and Clark
7 County, unless otherwise stipulated by the parties.

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

9 (3) The board shall elect one of its members presiding officer. The board may appoint a
10 committee of one or more of its members to perform routine acts, such as retirement of members and
11 fixing of retirement benefits, approval of death claims, and correction of records necessary in the
12 administration of the systems in accordance with the provisions of chapters 3, 5 through 9, ~~12~~, 13, and
13 ~~15~~ 17 of this title and in accordance with the rules of the board. The attorney general is the legal counsel
14 for the board."

15
16 Section 7. Section 19-2-403, MCA, is amended to read:

17 "19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the
18 chapters enumerated in 19-2-302.

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

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

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

27 (5) The board shall determine and may modify retirement benefits under the retirement systems.

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

30 (7) The board shall maintain records and accounts it determines necessary for the administration

1 of the retirement systems.

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

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

9 (10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party
0 mailings are implemented, the board shall adopt rules governing means of implementation, including the
11 specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees
2 generated by third-party mailings must be deposited in an account in the state special revenue fund and
3 must be appropriated to the board for the benefit of participants of retirement systems or plans
4 administered by the board.

5 (11) The board shall perform other duties and may exercise the powers concerning the defined
6 contribution plan for plan members as provided in [sections 42 through 64]."
7

8 **Section 8.** Section 19-2-405, MCA, is amended to read:

9 "19-2-405. Employment of actuary -- biennial investigation and valuation. (1) The board shall
0 retain a competent actuary who is an enrolled member of the American academy of actuaries and who
1 is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters
2 regarding the operation of the retirement systems.

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

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

0 (4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the

1 required employer contributions to the retirement ~~system~~ plan, must be calculated as ~~that~~ the level
2 percentage of ~~current and future defined benefit plan~~ members' salaries that will amortize the unfunded
3 actuarial liabilities of the retirement ~~system~~ plan over a reasonable period of time, not to exceed 30 years,
4 as determined by the board.

5 (b) In determining the amortization period under subsection (4)(a) for the public employees'
6 retirement system's defined benefit plan, the actuary shall take into account the plan choice rate
7 contributions to be made to the defined benefit plan pursuant to [section 53] and 19-21-203(5)(b).

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

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

12
13 **Section 9.** Section 19-2-406, MCA, is amended to read:

14 **"19-2-406. Determination of disability by board -- compliance with federal law -- conversion to**
15 **service retirement benefit -- rules.** (1) The board shall determine whether a member has become disabled.
16 In the discharge of its duty regarding determinations, the board, any member of the board, or any
17 authorized representative of the board may order medical examinations, conduct hearings, administer
18 oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the
19 attendance of witnesses and the production of books, papers, correspondence, memoranda, and other
20 records considered necessary as evidence in connection with a claim for disability retirement.

21 (2) The board shall adopt rules requiring employers to identify and explain the essential elements
22 of a member's position, any accommodations that were or can be made in compliance with the Americans
23 With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

24 (3) The board shall retain medical personnel to advise it in assessing the nature and extent of
25 disabling conditions while reviewing claims for disability retirement.

26 (4) The disability retirement benefit paid to a member must be converted to a service retirement
27 benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum
28 age required for normal service retirement. The board shall notify the member in writing as to the change
29 in status.

30 (5) This section does not apply to members of the defined contribution plan."

1
2 ~~Section 10~~ Section 19-2-407, MCA, is amended to read:

3 "19-2-407. Report by division to governor. As soon as practical after the close of each fiscal year,
4 the division shall file with the governor a report of its work for that fiscal year. The report must include
5 a statement as to the accumulated cash and securities in the pension trust funds as certified by the state
6 treasurer and the board of investments. The report must ~~also~~ include the most recent unpublished report
7 of the actuary of the actuarial valuation of the assets and liabilities of each system or plan. The report
8 must also provide information concerning the defined contribution plan, including a description of the plan,
9 the number of members in the plan, plan contribution rates, the total amount of money invested by
10 members, investment performance, administrative costs and fees, determinations on the plan choice rate
11 made pursuant to [section 54], and other information required under applicable governmental accounting
12 standards and as determined by the board."

13
14 Section 11. Section 19-2-408, MCA, is amended to read:

15 "19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the
16 pension trust funds benefits both employers and members and continues to benefit members after
17 retirement.

18 (2) The administrative expenses of the retirement systems administered by the board must be
19 paid from the investment earnings on the pension trust fund of the public employees' retirement ~~system~~
20 system's defined benefit plan, except as otherwise provided in ~~subsection (3)~~ this section. Before the
21 fiscal yearend closing, the board shall compute the administrative expenses attributable to each retirement
22 system or plan administered by the board for the immediately preceding fiscal year and transfer that
23 amount from each retirement system's pension trust fund to the pension trust fund of the public
24 employees' retirement system. The total administrative expenses of the board, including the
25 administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total defined
26 benefit plan retirement benefits paid.

27 (3) On January 1 of each year, each employer under the public employees' retirement system
28 shall contribute on behalf of each member then in its service a membership fee of \$1 in addition to other
29 required contributions. The fees must be used for the purpose of defraying the administrative expense of
30 chapters ~~2~~, 3, 5 through 9, and 13 and this chapter.

1 (4) The board may assess and the division may collect a fee from the department of fish, wildlife,
2 and parks for the purpose of defraying the expenses of administering chapter 8 of this title.

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3 (5) The administrative expenses of the defined contribution plan must be paid, as provided in
4 [section 46], from assets of the defined contribution plan."

5
6 **Section 12.** Section 19-2-409, MCA, is amended to read:

7 **"19-2-409. ~~Systems Plans~~ to be funded on actuarially sound basis -- definition.** As required by
8 Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound
9 basis. For purposes of this section, "actuarially sound basis" means that contributions to each ~~system~~
10 retirement plan must be sufficient to pay the full actuarial cost of the ~~system plan~~. ~~The~~ For a defined
11 benefit plan, the full actuarial cost includes both the normal cost of providing benefits as they accrue in
12 the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30
13 years. For the defined contribution plan, the full actuarial cost is the contribution defined by law that is
14 payable to an account on behalf of the member."

15
16 **Section 13.** Section 19-2-501, MCA, is amended to read:

17 **"19-2-501. Pension trust funds established.** A pension trust fund is established and maintained
18 for each retirement plan within a system subject to this chapter as enumerated in 19-2-302."

19
20 **Section 14.** Section 19-2-503, MCA, is amended to read:

21 **"19-2-503. Management of pension trust funds.** The pension trust funds must be managed as
22 follows:

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

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

27 (3) ~~The~~ Except as provided in [sections 42 through 64], the state treasurer is custodian of the
28 pension trust funds, subject to the exclusive control of the board for administration and the board of
29 investments for the investment of the funds."
30

1 Section 15. Section 19-2-504, MCA, is amended to read:

2 "~~19-2-504. Investment~~ of pension trust funds. (1) Except as provided in [sections 42 through
3 64], the pension trust funds of the retirement systems must be invested by the state board of
4 investments as part of the unified investment program described in Title 17, chapter 6, part 2.

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

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

9
10 Section 16. Section 19-2-505, MCA, is amended to read:

11 "~~19-2-505. Restrictions on use of funds.~~ (1) Except as provided in this section, a member or an
12 employee of the board, the department, or the board of investments may not:

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

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

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

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

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

25 (3) This section does not prevent:

26 (a) the administration of an investment alternative within the defined contribution plan to the
27 same extent that all other investment alternatives within the defined contribution plan are managed; or

28 (b) the facilitation of a member loan pursuant to [section 59] for members of the defined
29 contribution plan in the same manner and to the same extent that all other member loans made pursuant
30 to [section 59] are facilitated."

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Section 17. Section 19-2-603, MCA, is amended to read:

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"19-2-603. Reinstatement after withdrawal of contributions. (1) Except as otherwise provided in sections 42 through 64 and this section, ~~any~~ a person who again becomes a member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without credit for any previous membership service. The person may reinstate that membership service by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the service credits previously canceled must be reinstated.

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

Section 18. Section 19-2-902, MCA, is amended to read:

"19-2-902. Frequency of benefit payments. A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, other than a benefit under the defined contribution plan, must be payable in monthly installments, except that the board may elect to convert payments of at least \$20 per a year to a single sum of actuarial equivalent value. A smaller pro rata amount may be paid for part of a month when the retirement benefit ends before the last day of the month."

Section 19. Section 19-2-906, MCA, is amended to read:

"19-2-906. Limitations on disability or survivorship benefits. If the board determines that a ~~member's~~ the disability or death of a member of a defined benefit plan is proximately caused by the gross negligence, willful misconduct, or violation of the law by the member, the board may revoke, suspend, or refuse to grant benefits except an annuity that is the actuarial equivalent of the member's accumulated contributions with regular interest to the day the benefit commences."

1 Section 20. Section 19-2-907, MCA, is amended to read:

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

4 (2) For purposes of this section:

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

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

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

16 (4) A family law order may not require:

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

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

21 (5) ~~A~~ In a defined benefit plan, a family law order may only provide for payment to an alternate
22 payee as follows:

23 (a) Service retirement benefit payments or withdrawals of member contributions may be
24 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount
25 of no more than the amount payable to the participant.

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

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

4 (d) Payments must be limited to the life of the appropriate participant. The duration of payments
5 to an alternate payee may be further limited only to a specified maximum time, the life of the alternate
6 payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific
7 amount per each month if the number of payments is specified. The alternate payee's rights and interests
8 survive the alternate payee's death and may be transferred by inheritance.

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

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

14 (7) Each family law order establishing a final obligation concerning payments by the retirement
15 system must contain a statement that the order is subject to review and approval by the board.

16 (8) The board shall adopt rules to provide for the application of a family law order within the
17 defined contribution plan."

18
19 **Section 21.** Section 19-2-908, MCA, is amended to read:

20 "19-2-908. Time of commencement of benefit -- rulemaking. (1) (a) The board shall grant a
21 benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility
22 requirements, terminated covered service, and filed the appropriate written application.

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

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

29 (b) If an elected official's term of office expires before the 15th day of the month, the official may
30 elect that service retirement benefits from a defined benefit plan commence on the first day of the month

1 following the official's last full month in office. An official electing this option may not earn membership
2 service, service credit, or compensation for purposes of calculating final average salary under the
3 retirement system in the partial month ending the official's term, and compensation earned in that partial
4 month is not subject to employer or employee contributions.

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

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

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

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

14
15 **Section 22.** Section 19-2-909, MCA, is amended to read:

16 "19-2-909. **Execution or withholding for support obligation -- rulemaking.** (1) Benefits in the
17 retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution
18 and income withholding for the payment of a participant's support obligation.

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

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

23 (b) "Income withholding" means an income-withholding order issued under the provisions of Title
24 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in
25 40-5-157.

26 (c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent
27 annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or
28 17.

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

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

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

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

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

7 (a) Service retirement benefit payments or withdrawals of member contributions may be
 8 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount
 9 of no more than the amount payable to the participant.

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

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

16 (d) Payments must be limited to the life of the appropriate participant. The duration of payments
 17 under this section may be further limited only to a specified maximum time or the life of a specified
 18 participant. Payments may also be limited to a specific amount per each month if the number of payments
 19 is specified.

20 (5) The board shall adopt rules to provide for the application of an execution or
 21 income-withholding order within the defined contribution plan."

22
 23 **Section 23.** Section 19-2-1001, MCA, is amended to read:

24 "19-2-1001. **Maximum benefit and contribution limitation.** A monthly benefit paid under a defined
 25 benefit plan of the retirement systems and the annual additions to a retirement account within the defined
 26 contribution plan may not exceed the annual limits on benefits and contributions as specified in section
 27 415 of the Internal Revenue Code of 1986 and adjusted annually by the commissioner of internal
 28 revenue."

29
 30 **Section 24.** Section 19-2-1002, MCA, is amended to read:

1 "19-2-1002. Vesting of retirement benefits upon termination of ~~system plan~~. Upon termination
2 of a retirement ~~system plan~~, termination of employment of a substantial number of members that would
3 constitute a partial termination of the retirement ~~system plan~~, or complete discontinuance of contributions
4 to that retirement ~~system plan~~, the retirement benefit accrued to each member directly affected by the
5 occurrence becomes fully vested and nonforfeitable to the extent funded."

6
7 Section 25. Section 19-2-1003, MCA, is amended to read:

8 "19-2-1003. Transfer of dormant, nonvested member-accumulated contributions. The board may,
9 in its discretion, transfer the accumulated contributions of a nonvested member of a defined benefit plan
10 to the pension trust fund of the ~~system plan~~ in which the member is participating if the member has not
11 participated in the plan as an employee for a period of 10 years. Rights of the member may not be
12 jeopardized by the transfer, and the accumulated contributions must be transferred to the member's name
13 upon subsequent return to service or subsequent application for refund."

14
15 Section 26. Section 19-2-1005, MCA, is amended to read:

16 "19-2-1005. Compensation limit. A retirement ~~system plan~~ subject to this chapter may not take
17 into account compensation of a member in excess of the amount permitted in Internal Revenue Code
18 section 401(a)(17)."

19
20 Section 27. Section 19-2-1006, MCA, is amended to read:

21 "19-2-1006. Use of forfeitures. A retirement ~~system plan~~ subject to this chapter may not apply
22 forfeitures of benefits to increase the benefits of any member in a manner not permitted in Internal
23 Revenue Code section 401(a)(8)."

24
25 Section 28. Section 19-2-1007, MCA, is amended to read:

26 "19-2-1007. Required distributions. The benefits payable by the retirement ~~systems plans~~ subject
27 to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as
28 follows:

29 (1) Benefits must begin by April 1 of the calendar year following the plan year in which the
30 member reaches 70 1/2 years of age or retires, whichever is later.

1 (2) The member's entire interest in ~~the a retirement system plan~~ must be distributed over the life
 2 of the member or the lives of the member and a designated beneficiary, or over a period not extending
 3 beyond the life expectancy of the member or the life expectancy of the member and a designated
 4 beneficiary.

5 (3) When a member dies after distribution of benefits has begun, the remaining portion of the
 6 member's interest must be distributed at least as rapidly as under the method of distribution prior to the
 7 member's death.

8 (4) When a member dies before distribution of benefits has begun, the entire interest of the
 9 member must be distributed within 5 years of the member's death. The 5-year payment rule does not
 10 apply to any portion of the member's interest that is payable to a designated beneficiary over the life or
 11 life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The
 12 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving
 13 spouse, that is payable over the life or life expectancy of the spouse, and that begins no later than the
 14 date the member would have reached 70 1/2 years of age.

15 (5) The benefits payable must meet the minimum distribution incidental benefit requirements of
 16 section 401(a)(9)(G) of the Internal Revenue Code."

17
 18 **Section 29.** Section 19-3-103, MCA, is amended to read:

19 "**19-3-103. Retirement system created -- system to consist of two plans.** (1) A defined benefit
 20 retirement ~~system plan~~ is created and established to become effective July 1, 1945, ~~and to be known as~~
 21 ~~the public employees' retirement system.~~

22 (2) A defined contribution plan is established as provided in [sections 42 through 64].

23 (3) The public employees' retirement system consists of the defined benefit plan and the defined
 24 contribution plan. Each plan within the system is governed by the applicable provisions of chapter 2 and
 25 this chapter."

26
 27 **Section 30.** Section 19-3-108, MCA, is amended to read:

28 "**19-3-108. Definitions.** Unless the context requires otherwise, as used in this chapter, the
 29 following definitions apply:

30 (1) "Compensation" means remuneration paid out of funds controlled by an employer.

1 Compensation does not include the payments or contributions made in lieu of wages for an individual
 2 subject to 19-3-403(4)(a).

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

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

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

10 ~~(4)~~(5) "Employer contributions" means payments to ~~the~~ a pension trust fund pursuant to 19-3-316
 11 from appropriations of the state of Montana and from contracting employers.

12 ~~(5)~~(6) "Final average salary", except as provided in 19-3-520, means a member's highest average
 13 monthly compensation during any 36 consecutive months of membership service. Lump-sum payments
 14 for severance pay, sick leave, and annual leave paid to the member upon termination of employment may
 15 be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a
 16 month-for-month basis, the regular compensation for a month or months included in the calculation of the
 17 final average salary. A lump-sum payment may not be added to a single month's compensation.

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

20
 21 Section 31. Section 19-3-201, MCA, is amended to read:

22 "19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public
 23 agency in the state may become a contracting employer and make all or specified groups of its employees
 24 members of the retirement system by a contract entered into between the board and the legislative body
 25 of the contracting employer. The contract may include any provisions that are consistent with chapter
 26 2 and this chapter and necessary in the administration of the retirement system as it affects the
 27 contracting employer and its employees.

28 (2) The approval of the contract is subject to the following provisions, in addition to the other
 29 provisions of this chapter:

30 (a) The legislative body of the contracting employer shall adopt a resolution giving notice of

1 intention to approve the contract and containing a summary of the major provisions of the retirement
2 system. The contract may not be approved unless the employees proposed to be included in the
3 retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the
4 election must include the summary of the retirement system as set forth in the resolution. The election
5 must be conducted as prescribed by the legislative body of the contracting employer. Approval of the
6 contract must be by ordinance adopted by the affirmative vote of two-thirds of the members of the
7 legislative body, not less than 20 days after the adoption of the resolution or by an ordinance adopted by
8 a majority vote of the electorate of the contracting employer voting on the contract.

9 (b) The contract must specify that all employees of the contracting employer or groups of
10 employees as agreed to between the board and the contracting employer ~~must~~ shall become members.
11 The groups of employees to be included must be by departments, duties, or other similar classifications
12 and not by individual employees. The board may disapprove any classification into groups if, in its opinion,
13 the classification affects adversely the interest of the retirement system. Membership in the retirement
14 system is compulsory for all employees included under the contract and who are hired after the effective
15 date of the contract. An employee's membership in either the defined benefit plan or the defined
16 contribution plan is determined on an individual basis as provided in this chapter.

17 (c) The contract may be amended in the manner prescribed in this section for the original approval
18 of contracts. Groups of excluded employees may be subsequently included by amendment.

19 (3) The termination of the contract is subject to the following provisions, in addition to the other
20 provisions of this chapter:

21 (a) The legislative body of a contracting employer shall adopt a resolution giving notice to its
22 employees that it intends to terminate retirement system coverage.

23 (b) All employees covered under the retirement system ~~shall~~ must receive notice of the
24 termination resolution and be permitted to vote for or against the resolution by secret ballot.

25 (c) If a majority of covered employees votes for termination, the legislative body, not less than
26 20 days after the approval of the resolution by the employees, may adopt by a ~~2/3~~ two-thirds majority
27 a resolution terminating coverage under the system effective the last day of that month and forward the
28 resolution and a certified copy of the election results to the board.

29 (d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the
30 liabilities of the terminating agency to the retirement system, and the board may withhold approval of the

1 termination of contract until satisfactory arrangements are made to provide funding for any excess
2 accrued liabilities ~~not previously~~ funded by the terminating agency."

3
4 Section 32. Section 19-3-203, MCA, is amended to read:

5 "19-3-203. Conversion of local or state retirement plan. (1) If the legislative body of any city,
6 county, or public agency having an existing retirement, pension, or annuity fund or system, referred to
7 as the local system, desires to make the members of the local system members of the public employees'
8 retirement system, it may enter into a contract for that purpose with the board in the manner provided
9 in 19-3-201. However, the employees voting, as provided in 19-3-201(2)(a), ~~shall~~ must be limited to
10 active members of the local system, and approval ~~shall require~~ requires an affirmative vote of two-thirds
11 of the employees.

12 (2) ~~All~~ Subject to the applicable provisions of this chapter, active members of the local system
13 shall become members of either the defined benefit plan or the defined contribution plan of the retirement
14 system and ~~shall~~ are no longer ~~be~~ members of the local system. The pensions being paid to pensioners
15 or annuitants of the local system on the effective date of the contract must be continued and paid at their
16 existing rates by the public employees' retirement system. The liability for the pensions must be computed
17 by the actuary and charged to the contracting employer. All cash and securities held by the local system
18 must be transferred to the retirement system as of the effective date of the contract and credited to the
19 employer. The value of the securities must be determined by the board.

20 (3) The trustees or other administrative head of the local system as of the effective date of the
21 contract shall certify the proportion, if any, of the funds of the system that represents the accumulated
22 contributions of the active members and the relative shares of the members as of that date. The shares
23 must be charged to the employer and credited as accumulated contributions of the members in the public
24 employees' retirement system and administered as if the contributions had been made during membership
25 in the retirement system. Any excess of employer credits over charges under this section must be offset,
26 with regular interest, against future required employer contributions. Any excess of employer charges over
27 credits under this section must be payable by the contracting employer, with regular interest, on a
28 monthly basis as specified in the contract."

29
30 Section 33. Section 19-3-315, MCA, is amended to read:

1 "19-3-315. Member's contribution to be deducted. (1) ~~On and after July 1, 1997, the regular~~
2 ~~contribution of each member is 6.8% of the member's compensation. Each member's contribution~~
3 ~~increases to is 6.9% beginning July 1, 1999 of the member's compensation.~~
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4 (2) Payment of salaries or wages less the contribution is full and complete discharge and
5 acquittance of all claims and demands for the service rendered by members during the period covered by
6 the payment, except their claims to the benefits to which they may be entitled under the provisions of
7 this chapter.

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

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

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

17 (c) In the case of a member of the defined contribution plan, these contributions must be
18 allocated as provided in [section 53].

19 (5) The member's contributions picked up by the employer must be payable from the same source
20 as is used to pay compensation to the member and must be included in the member's wages, as defined
21 in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount
22 equal to the amount of the member's contributions picked up by the employer and remit the total of the
23 contributions to the board."
24

25 Section 34. Section 19-3-316, MCA, is amended to read:

26 "19-3-316. Employer contribution rates. (1) Each employer shall contribute to ~~the cost of benefits~~
27 ~~under~~ the system. Except as provided in subsection (2), the amount of the employer contribution as a
28 percentage of the employer's covered payroll is ~~6.8% beginning July 1, 1997, and increases to 6.9%~~
29 ~~beginning July 1, 1999.~~ Of employer contributions made under this subsection for both defined benefit
30 plan and defined contribution plan members, a portion must be allocated for educational programs as

1 provided in [section 41]. Employer contributions for members under the defined contribution plan must
2 be allocated as provided in [section 53].

3 (2) Local government and school district employer contributions must be the total employer
4 contribution rate provided in subsection (1) minus the state contribution rate applied to their monthly
5 covered payrolls under 19-3-319. The payment is statutorily appropriated as provided in 17-7-502."

6
7 Section 35. Section 19-3-401, MCA, is amended to read:

8 "19-3-401. Membership -- inactive vested members -- inactive nonvested members. (1) Except
9 as otherwise provided in this chapter, all employees shall become members of the defined benefit plan
10 on the first day of service. Each employer shall file with the board information affecting their employees'
11 status as members ~~of the retirement system~~ as the board may require. An employee may become a
12 member of the defined contribution plan only as provided in [sections 42 through 64].

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

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

21 (4) Every employee who reenters service shall become a member of either the defined benefit
22 plan or the defined contribution plan subject to the provisions of this chapter unless the employee has had
23 an original election of exemption from membership and the employee's service was not interrupted by a
24 break of more than 1 month. A seasonal employee who has had an original election of exemption from
25 membership is not subject to the requirement regarding the break in service while continuing in the
26 employee's original employment and employed on a seasonal basis, but upon termination of employment
27 to accept new employment or absence of more than 1 month in returning to original employment in any
28 ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.

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

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Section 36. Section 19-21-102, MCA, is amended to read:

~~"19-21-102. Definition of teachers' retirement system Definitions. In this chapter, "teachers'~~

Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Program" means the optional retirement program established pursuant to this chapter.

(2) "Public employees' retirement system" means the retirement system established in 19-3-103.

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

Section 37. Section 19-21-201, MCA, is amended to read:

~~"19-21-201. Participation in program. (1) Except as provided in subsection (2), academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the optional retirement program instead of the teachers' retirement system. This election must be exercised:~~

~~(a) before January 1, 1988, for an eligible person hired before July 1, 1987;~~

~~(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and~~

~~(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the optional retirement program by reason of appointment, promotion, transfer, or reclassification to an eligible position.~~

~~(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the optional retirement plan program unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.~~

~~(b) An eligible person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:~~

~~(i) remain with the retirement system of which the person is a member on the date hired; or~~

~~(ii) become a member of the optional retirement plan program.~~

~~(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.~~

(d) A person is ineligible to make an election under subsection (1) or (2) if the person previously

1 elected to remain in the teachers' retirement system pursuant to subsection (1) or to remain in the public
 2 employees' retirement system pursuant to this subsection (2).

3 (3) The election must be exercised by filing a written ~~notice~~ irrevocable election with the
 4 teachers' retirement system and the disbursing officer of the employer. The election is effective as of the
 5 date the notice is filed or January 1, 1988, whichever is later.

6 (4) If an eligible officer or staff member fails to exercise the election, as provided by this section,
 7 that person ~~must~~ shall remain or become a member of the teachers' retirement system.

8 (5) An election under this section is not effective unless the notice filed with the disbursing officer
 9 of the employer is accompanied by an appropriate application, if one is required, for the issuance of a
 10 contract or contracts under the program.

11 (6) Subject to and as provided in [section 48], a university system employee in a position covered
 12 under the public employees' retirement system may elect to participate in the program."

13
 14 Section 38. Section 19-21-202, MCA, is amended to read:

15 "19-21-202. Effect on rights under teachers' retirement system. (1) An election under
 16 19-21-201 (1) through (3) and (5) to participate in the ~~optional retirement~~ program is a waiver of all rights
 17 and benefits under the teachers' retirement system except as provided in this section.

18 (2) A member of the teachers' retirement system who elects to participate in the ~~optional~~
 19 ~~retirement~~ program is considered, for the purpose of determining eligibility for rights and benefits under
 20 that system, to be no longer employed in a capacity that allows active membership in that system as of
 21 the effective date of the election. Thereafter, the member is considered an inactive member of the
 22 ~~retirement~~ system if qualified under 19-20-303, with the rights and privileges provided under
 23 19-20-603(1). A member who elects to participate in the ~~optional retirement~~ program who does not
 24 qualify as an inactive member under 19-20-303 is considered a terminated member of the ~~retirement~~
 25 system under 19-20-304(4).

26 (3) A person who elects to participate in the ~~optional retirement~~ program is ineligible to be an
 27 active member of the teachers' retirement system while continuously employed in a position eligible to
 28 participate in the ~~optional retirement~~ program."

29
 30 Section 39. Section 19-21-203, MCA, is amended to read:

1 "19-21-203. Contributions -- supplemental and plan choice rate contributions. (1) Each optional
2 retirement program participant shall contribute an amount equal to the member's contribution required
3 under 19-20-602. The board of regents shall contribute an amount that, when added to the participant's
4 contribution, is equal to 12% of the participant's earned compensation.

5 (2) (a) ~~On or after July 1, 1997, the~~ The board of regents may:

6 (i) reduce the participant's contribution rate established in subsection (1) to an amount not less
7 than 6% of the participant's earned compensation; and

8 (ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's
9 earned compensation.

10 (b) The sum of the participant's and employer's contributions made under subsection (2)(a) must
11 remain at 12% of the participant's earned compensation.

12 (3) The board of regents shall determine whether the participant's contribution is to be made by
13 salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer ~~pick-up~~ pickup
14 under section 414(h)(2) of that code.

15 (4) The disbursing officer of the employer or other official designated by the board of regents shall
16 pay both the participant's contribution and the appropriate portion of the board of regents' contribution
17 to the designated company or companies for the benefit of the participant.

18 (5) (a) The board of regents shall make the supplemental contributions to the teachers' retirement
19 system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system
20 for the past service liability incurred by active, inactive, and retired members of the teachers' retirement
21 system.

22 (b) For employees electing to become program members pursuant to [section 48], the board of
23 regents shall, in addition to other contributions required under this section, contribute to the public
24 employees' retirement system the plan choice rate provided in [section 53(2)(b)] and adjusted pursuant
25 to [section 54]."

26
27 **NEW SECTION.** Section 40. Nonapplication of part to defined contribution plan. Except as
28 otherwise provided in [sections 42 through 64], none of the provisions of this part apply under the defined
29 contribution plan.

1 NEW SECTION. Section 41. Education fund established -- allocation of employer contributions
2 -- educational program requirements. (1) (a) The board shall establish an education fund and provide for
3 educational programs for system members in a manner consistent with the provisions of this section.

4 (b) For the initial transfer educational program established for system members, the following
5 amounts must be allocated to the education fund established in subsection (1)(a):

6 (i) from the employee contributions made pursuant to 19-3-315 for fiscal year 2000, \$10 from
7 each member's contributions; and

8 (ii) from the employer contributions made pursuant to 19-3-316 for fiscal year 2000, 0.075% of
9 covered payroll.

10 (c) For the ongoing educational and communication programs established pursuant to this section,
11 from the employer contributions made pursuant to 19-3-316, 0.04% of covered payroll must be allocated
12 to the education fund established in subsection (1)(a). The board shall from time to time review the
13 sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

14 (2) (a) The educational programs must provide system members with impartial and balanced
15 information about plan choices. The programs must involve multimedia formats. Plan comparisons must,
16 to the greatest extent possible, be based upon real rates of return on investments available in each
17 retirement plan.

18 (b) If an educational program is conducted by a contractor, the board shall monitor the
19 performance of the contract to ensure that the program is conducted in accordance with the contract,
20 applicable law, and the rules of the board. A contractor hired to provide educational services pursuant
21 to this section may not be the same entity contracted to provide other services for the defined
22 contribution plan.

23 (3) The board shall provide for an initial and an ongoing transfer educational program to provide
24 system members with information necessary to make informed plan choice decisions. The transfer
25 educational program must include but is not limited to information on:

26 (a) the amount of money available to a member to transfer to the defined contribution plan;

27 (b) the features of and differences between the defined benefit plan and the defined contribution
28 plan, both generally and specifically, as those differences may affect the member;

29 (c) the expected benefit available if the member were to retire under each of the retirement plans,
30 based on appropriate alternative sets of assumptions;

1 (d) the aggregate rate of return from investments in the defined contribution plan and the period
2 of time over which the aggregate rate of return must be achieved to equal or exceed the expected
3 monthly benefit payable to the member under the defined benefit plan;

4 (e) the historical rates of return for the investment alternatives available in the defined
5 contribution plan;

6 (f) the benefits and historical rates of return on investments available in deferred compensation
7 plans or a plan under section 403(b) of the Internal Revenue Code for which the employee may be eligible;

8 (g) the plan choices available to employees of the university system pursuant to [section 48] and
9 the comparative benefits of each available plan; and

10 (h) payout options available in each of the retirement plans.

11 (4) An ongoing educational and communication program must provide members of either plan
12 with information necessary to make informed decisions about choices within their plan of membership
13 and in preparation for retirement. The program must include but not be limited to information concerning:

14 (a) rights and conditions of membership;

15 (b) benefit features within the plan, options, and the effects of certain decisions;

16 (c) coordination of contributions and benefits with a deferred compensation plan under section
17 457 of the Internal Revenue Code or a plan under section 403(b) of the Internal Revenue Code;

18 (d) significant plan changes;

19 (e) contribution rates and plan funding status; and

20 (f) planning for retirement.

21 (5) The board shall also establish a communication program to provide plan information to
22 participating employers and the employer's personnel and payroll officers and to explain their respective
23 responsibilities in conjunction with the retirement plans.

24 (6) This section does not prohibit a plan vendor or vendors from providing system members with
25 information necessary to make informed decisions about the defined contribution plan and investment
26 alternatives within the plan.

27
28 **NEW SECTION.** Section 42. Definitions. Unless the context requires otherwise, as used in
29 [sections 42 through 64], the following definitions apply:

30 (1) "Member" means an employee with a retirement account in the defined contribution plan.

1 (2) "Optional retirement program" means the retirement plan established by the board of regents
2 under chapter 21 of this title.

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

4
5 NEW SECTION. Section 43. Defined contribution plan established -- assets to be held in trust --
6 contracted services. (1) The board shall establish within the public employees' retirement system a
7 defined contribution plan in accordance with the provisions of [sections 42 through 64]. The plan must
8 be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a
9 "qualified plan" pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations.
10 Retirement accounts must be established for each member of the defined contribution plan. Assets of the
11 plan must be held in trust. The plan is established in addition to any retirement, pension, deferred
12 compensation, or other benefit plan administered by the state or a political subdivision.

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

15 (3) The board shall contract for a qualified consultant to assist in preparation of the request for
16 bid or request for proposal for plan services.

17
18 NEW SECTION. Section 44. Legislative intent. It is the intent of the legislature that, in
19 implementing and administering the defined contribution plan:

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

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

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

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

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

29 (6) employers be encouraged to provide paid time for employees to attend educational programs
30 sponsored by the board pursuant to [section 41].

1

2 **NEW SECTION. Section 45. Board powers and duties -- rulemaking.** (1) The board has the powers
3 and shall perform the duties regarding the defined contribution plan as provided in 19-2-403, as applicable.
4 The board may also exercise the powers and shall perform the duties provided in this chapter.

5 (2) The board shall, in accordance with the Montana Administrative Procedure Act, adopt rules
6 necessary for the implementation of [sections 42 through 64] and other applicable sections in chapters
7 2 and 3 of this title, including rules concerning the following:

8 (a) matters necessary for the treatment of the plan as a qualified plan under applicable sections
9 of the Internal Revenue Code;

10 (b) the treatment of dormant or inactive accounts;

11 (c) the security and privacy of information maintained by the board concerning a member's
12 investments, as required by applicable law;

13 (d) minimum asset, reserve, insurance, or other security requirements intended to ensure the
14 solvency of a contractor used by the board for investment services; and

15 (e) the commencement of benefits in the plan pursuant to [sections 42 through 64] and as
16 provided in 19-2-908.

17

18 **NEW SECTION. Section 46. Administrative expenses and fees.** (1) The board may establish a
19 fund within the defined contribution plan for paying the plan's administrative expenses.

20 (2) The board may:

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

22 (b) negotiate with a vendor or vendors for vendor reimbursement of board administrative expenses
23 from fees collected by the vendor.

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

25

26 **NEW SECTION. Section 47. Plan membership -- written election required -- failure to elect --**
27 **effect of election.** (1) Except as otherwise provided in [sections 42 through 64]:

28 (a) (i) a member who is an active member of the defined benefit plan on the date that the defined
29 contribution plan becomes effective may, within 12 months after that date, elect to transfer to and
30 become a member of the plan;

1 (ii) a member who was an inactive member of the defined benefit plan on the date that the defined
2 contribution plan becomes effective and who is rehired into covered employment after the plan effective
3 date may, within 12 months after the member's rehire date, elect to transfer to and become a member
4 of the plan;

5 (b) a member who is initially hired into covered employment on or after the date that the defined
6 contribution plan becomes effective may, within 12 months of the member's hire date, elect to become
7 a member of the plan.

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

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

11 (c) An election under this section, including the default election pursuant to subsection (2)(b), is
12 a one-time irrevocable election. Subject to [section 49], this subsection (2)(c) does not prohibit a new
13 election after an employee has terminated membership in either plan and returned to covered employment.

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

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

21 (5) The provisions of [sections 42 through 64] do not prohibit the board from adopting rules to
22 allow an employee to elect the defined contribution plan on the first day of covered employment.

23 (6) A member of the defined benefit plan who is subject to a family law order pursuant to
24 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the
25 defined contribution plan unless the order is modified to apply under the defined contribution plan or, for
26 university employees making an election pursuant to [section 48], the optional retirement program.

27
28 NEW SECTION. Section 48. Plan choices for members employed by university system -- amount
29 available to transfer -- effect on rights. (1) If an employee of the university system, as defined in
30 5-20-201, is eligible to make an election under [sections 42 through 64] to transfer to the defined

1 contribution plan, the employee may, instead of electing the plan, make a one-time irrevocable election
2 on a form prescribed by the board to transfer membership to the university system's optional retirement
3 program provided for under chapter 21 of this title.

4 (2) For an employee electing to transfer to the optional retirement program, the board shall
5 transfer to the optional retirement program the amount that the employee would have been able to
6 transfer to the defined contribution plan under [section 50].

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

9
10 **NEW SECTION.** Section 49. Reinstatement of plan membership -- purchase of prior service in
11 defined benefit plan. (1) (a) An employee who terminated membership in the defined benefit plan, the
12 defined contribution plan, or the optional retirement program after making an election pursuant to [section
13 47] or [section 48] and who returns to covered employment after a break in service of less than 24
14 consecutive months shall become a member of the plan that the member last selected and is not eligible
15 for a new plan choice election.

16 (b) Except as provided in subsection (2), an employee who terminated membership in either the
17 defined benefit plan, the defined contribution plan, or the optional retirement program after making an
18 election pursuant to [section 47] or [section 48] and who returns to covered employment after a break
19 in service of 24 consecutive months or more is eligible to make a plan choice election as if the employee
20 were initially hired as provided for in [section 47(1)(b)].

21 (2) (a) An employee who returns to covered employment after terminating plan membership in the
22 defined contribution plan or the optional retirement program shall return to the plan previously selected
23 if the employee has accessed money derived from the employee's former retirement account by:

24 (i) receiving a lump-sum distribution of the member's former retirement account, unless the
25 distribution was forced pursuant to [section 60(1)(b)];

26 (ii) receiving a lump-sum distribution from an account outside the defined contribution plan that
27 has at any time received a transfer of funds from the member's former retirement account or any account
28 to which the member has transferred funds from a former retirement account; or

29 (iii) receiving a regular benefit, payment, or distribution from an account outside the defined
30 contribution plan in which there is money from the member's former retirement account.

(b) For the purposes of this subsection (2), "retirement account" also includes an employee's account under the optional retirement program.

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

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

NEW SECTION. Section 50. Amount available to transfer. (1) (a) For an employee who was a system member on the day before the effective date of the defined contribution plan and who elects to transfer to the plan, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the employee and employer contributions.

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

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

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the

1 member's retirement account an amount equal to the amount that would have been credited to the
2 member's account pursuant to [section 53] had the employee become a plan member on the employee's
3 hire date, plus interest credited at the actuarially assumed rate of return on the defined benefit plan assets
4 as of the plan's latest actuarial valuation.

5
6 **NEW SECTION. Section 51. Transfers or rollovers into plan -- membership credit for purposes**
7 **of vesting. (1) Except as provided in subsection (2), the board shall accept the transfer or rollover of**
8 **assets from another qualified plan to the member's retirement account. If a member is transferring assets**
9 **from another plan provided for in this title, the member must, for the purposes of becoming vested**
10 **pursuant to [section 52], receive credit for the employee's prior membership service under that plan.**

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

13 (b) To the extent that the transfer or rollover is disallowed under the Internal Revenue Code
14 provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a
15 member may not transfer or rollover to a retirement account contributions made under sections 403(b)
16 and 457 of the Internal Revenue Code.

17
18 **NEW SECTION. Section 52. Vesting -- mandatory termination of membership -- forfeitures. (1)**
19 **A member is fully vested with the member's contributions and the income on those contributions from**
20 **the date that the employee becomes a member of the plan, but is not considered a vested member, as**
21 **defined in 19-2-303, unless the member meets the criteria under subsection (2).**

22 (2) A member is not vested with the employer's contributions and the income on those
23 contributions and does not attain the status of a vested member until the member has a total of 5 years
24 of membership service under the system.

25 (3) A member who terminates covered employment before becoming a vested member shall
26 terminate plan membership by removing from the plan the member's entire account balance as provided
27 in [section 56]. The employer contributions and income on the employer's contributions in the member's
28 retirement account are forfeited and must be allocated as provided in [section 53].

29
30 **NEW SECTION. Section 53. Allocation of contributions and forfeitures. (1) Each plan member's**

1 retirement account must be credited with the employee contributions made under 19-3-315.

2 (2) Subject to adjustment by the board as provided in [section 54], beginning on the plan's
3 effective date, of the employer contributions under 19-3-316:

4 (a) 4.49% of compensation must be allocated to the member's retirement account; and

5 (b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate.

6 (3) Forfeitures of employer contributions and investment income on the employer contributions
7 may not be used to increase a member's retirement account. The board shall allocate the forfeitures under
8 [section 52] to meet the employer contributions obligation provided under subsection (2)(a) of this section
9 in lieu of direct contributions by the employer and shall increase the contribution amount under subsection
10 (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions.

11
12 **NEW SECTION.** Section 54. Determination and adjustment of plan choice rate and contribution
13 allocations -- rulemaking. (1) The board shall provide for the periodic review of the sufficiency of the plan
14 choice rate and shall adjust the allocation of contributions under [section 53] as specified in this section.
15 The board shall provide that the data necessary to comply with this section is collected and maintained
16 for all system members.

17 (2) The plan choice rate set in [section 53(2)(b)] must be adjusted as provided in this section,
18 taking into account:

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

21 (b) as determined under subsection (4), the anticipated reduction in defined contribution plan
22 costs because of forfeitures; and

23 (c) as determined under subsection (5), the sufficiency of the plan choice rate to actuarially fund
24 the defined contribution plan's share of the defined benefit plan's unfunded liabilities.

25 (3) The change in the normal cost contribution rate must be an amount equal to the difference
26 between the normal cost contribution rate in the defined benefit plan that would have resulted if all
27 system members remained in the defined benefit plan and the normal cost contribution rate in the defined
28 benefit plan for the actual members of the defined benefit plan, multiplied by the covered payroll of
29 members in the defined benefit plan, divided by the covered payroll of members in the defined contribution
30 plan. The measurements under this subsection must be based on the defined benefit plan in effect on the

1 effective date of the defined contribution plan until the board determines that the defined benefit plan has
2 been amended in a manner that significantly affects plan choices available to system members. After a
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4 board determination that the defined benefit plan has been significantly changed, the measurements in
5 this subsection with respect to members entering the system after the significant change must be made
6 on the basis of the defined benefit plan, as amended.

7 (4) The anticipated reduction in defined contribution plan costs as a result of forfeitures under
8 [section 52] must be determined as the amount of forfeitures expected during the next biennium based
9 on actual forfeitures in the preceding biennium, adjusted by taking into account the gains or losses during
10 the preceding biennium resulting from forfeitures of greater or lesser amounts than expected, divided by
11 twice the covered payroll of members of the defined contribution plan.

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

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

18 (b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant
19 to 19-2-405, the board shall determine whether the plan choice rate minus the sum of the amounts
20 provided in subsections (2)(a) and (2)(b) of this section is sufficient to pay the unfunded liability
21 obligations within the schedule determined under subsection (5)(a) of this section. If the amount is
22 insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than
23 sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall
24 determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is
25 required to actuarially fund the liabilities according to the established schedule.

26 (6) If the board determines that the plan choice rate should be increased or decreased, the plan
27 choice rate under [section 53(2)(b)] must be increased or decreased accordingly. If the plan choice rate
28 is increased, the allocation of employer contributions to member accounts under [section 53(2)(a)] must
29 be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions
30 to member accounts under [section 53(2)(b)] must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of

1 employer contributions under [section 53(2)] must be changed, the board shall notify system members,
2 participating ~~employers~~, ~~employee~~ and employer organizations, the governor, and the legislature of its
3 determination and of the changes required.

4 (8) Effective January 1 of the year after the regular legislative session that immediately follows
5 a determination under this section, the plan choice rate and the allocation of contributions under [section
6 53(2)] must be adjusted according to the board's determination.

7
8 **NEW SECTION. Section 55. Investment alternatives -- notice of changes -- default fund.** (1) The
9 board shall contract with a vendor or vendors to provide for at least eight investment alternatives within
10 the defined contribution plan. In providing for the plan's investment alternatives, only a vendor or vendors
11 offering suitable and well-managed investments, licensed to conduct business in Montana, and regulated
12 by the United States securities and exchange commission may be used.

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

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

16 (b) a range of investment alternatives that:

17 (i) provides sound and diversified funds;

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

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

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

24 (3) Subject to a competitive bidding process, the investment alternatives may include the
25 investment alternatives offered to members of the state deferred compensation plan pursuant to chapter
26 50 of this title.

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

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

1 member.

2 (6) The board shall provide for a balanced fund to be established as a default investment fund.
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 4 In the case of a member failing to direct how the member's retirement account is to be invested, the
 5 member's entire account balance must be invested in the default fund.

6 (7) This section does not prohibit the board from contracting with the board of investments
 7 established in 2-15-1808 to provide one or more investment alternatives within the plan.

8 **NEW SECTION. Section 56. Payout of account balances when terminating plan membership.**
 9 Subject to [section 59(3)], any time after termination of covered employment, a member or the member's
 10 beneficiary may terminate plan membership by making a written application to the board and removing
 11 the member's account balance from the plan through any combination of the following payout options,
 12 each of which is subject to applicable regulations of the internal revenue service:

13 (1) a direct rollover to an eligible retirement plan or to an individual retirement account or annuity
 14 pursuant to section 401(a)(31) of the Internal Revenue Code;

15 (2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal
 16 Revenue Code; or

17 (3) a lump-sum distribution of the member's account balance.

18
 19 **NEW SECTION. Section 57. Distribution options for plan members -- rulemaking -- minimum**
 20 **distribution requirements -- restrictions.** (1) Subject to [sections 52 and 60], a member may, after
 21 termination of covered employment, leave the member's account balance in the plan, and the member
 22 is eligible for a distribution as provided in this section.

23 (2) After termination of covered employment, upon written application to the board, a member
 24 may:

25 (a) if the member is at least 60 years of age, directly transfer the member's account balance to
 26 the defined benefit plan and purchase for the full actuarial cost, as determined by the board, a benefit
 27 equivalent to an optional retirement benefit provided under 19-3-1501 and subject to the guaranteed
 28 annual benefit adjustment as provided in 19-3-1605; or

29 (b) if provided for by the board, select a distribution option offered pursuant to a contract
 30 negotiated by the board with a plan vendor or vendors.

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

3 (4) The board shall adopt rules to administer this section and to provide that distributions comply
4 with the minimum distribution requirements established in the Internal Revenue Code and applicable under
5 19-2-1007.

6
7 **NEW SECTION. Section 58. Death benefits.** A plan member's beneficiary must be determined
8 as provided in chapter 2, part 8, of this title. Upon written application filed with the board after the death
9 of a plan member, the member's beneficiary is entitled to the member's account balance and all rights
10 established in and subject to [sections 42 through 64].

11
12 **NEW SECTION. Section 59. Member loans -- rulemaking.** (1) (a) Except as provided in subsection
13 (1)(b), a vested member may take a loan from the member's account balance of up to one-half of the
14 member's account balance or \$50,000, whichever is less. A loan may be made for no longer than 5 years
15 and must be paid back with interest at a rate equal to the average prime interest rate of major New York
16 banks in effect at the time that the loan was made. The loan provided for in this section is intended to
17 qualify as a right or feature of the plan for the exclusive benefit of a plan member or the member's
18 beneficiary.

19 (b) A member is ineligible for a loan if the member's account is subject to a family support order
20 pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909.

21 (2) Repayment by an active member must be by automatic payroll deduction from the
22 compensation of the member paid by the member's employer.

23 (3) A member who takes a loan may not terminate plan membership and is not eligible for a
24 payout under [section 56] or a distribution under [section 57] until the loan is fully repaid.

25 (4) The board may contract for loan administration and shall adopt rules to implement this section.

26
27 **NEW SECTION. Section 60. Minimum account balance required for membership after termination**
28 **-- adjustment by rule.** (1) (a) If a member's account balance is less than \$5,000 at the time that the
29 member terminates covered employment, the member shall, subject to [section 59], terminate plan
30 membership by removing the member's account balance from the plan in a manner provided pursuant to

1 [section 56].

2 (b) If the member fails to remove the member's account balance, the board may close the
 3 account by paying to the member a lump-sum distribution of the member's entire account balance.

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

6
 7 **NEW SECTION.** Section 61. Implementation schedule -- plan effective date. (1) In exercising its
 8 authority pursuant to [sections 42 through 64] to implement the defined contribution plan, the board shall:

9 (a) by September 1, 1999, retain a qualified consultant to assist the board in developing
 10 appropriate requests for proposals for contracted services;

11 (b) by January 1, 2000, issue a request for proposal for all required contracted services;

12 (c) by August 1, 2000, award the contracts for all required contracted services; and

13 (d) by September 1, 2000, begin the development and modification of data systems and reporting
 14 processes required to administer the plan.

15 (2) The defined contribution plan must become operational by no later than July 1, 2002.

16
 17 **NEW SECTION.** Section 62. Implementation team -- state agency assistance. The board shall
 18 create an implementation team to assist in establishing the defined contribution plan. Upon request of the
 19 board, other state agencies may provide technical and professional assistance to support the
 20 implementation of the plan. The board may also request the assistance of other contracting employers
 21 and may provide compensation for personal services and other costs incurred by an agency or contracting
 22 employer to support the board pursuant to this section.

23
 24 **NEW SECTION.** Section 63. Creation of advisory council required. Pursuant to the powers
 25 authorized under 2-15-122, the director of the department shall, by August 1, 1999, appoint a defined
 26 contribution plan advisory council, which must be approved by the governor for an initial term of 2 years.
 27 The advisory council shall meet at least quarterly and shall advise the board concerning the establishment
 28 and operation of the defined contribution plan, including the selection of the initial investment alternatives
 29 to be provided pursuant to [section 55]. On the second anniversary of the creation of the advisory council,
 30 the governor shall determine whether to continue the existence of the council as provided in 2-15-122.

1
2 NEW SECTION. Section 64. Legislative oversight committee -- reports and recommendations by
3 board -- study of health care costs. (1) The legislative council shall provide for an appropriate interim
4 legislative committee to oversee the implementation of the defined contribution plan established pursuant
5 to [sections 42 through 64] and to act as a steering committee on matters of policy.

6 (2) The board shall consult with and provide regular progress reports to the committee and shall
7 make recommendations regarding the design and implementation of the defined contribution plan.

8 (3) The committee shall also examine options for addressing the cost of postretirement health
9 insurance and other medical care for public retirees.

10
11 NEW SECTION. Section 65. Board to seek commissioner's ruling or opinion. The public
12 employees' retirement board shall, as soon as possible, request in writing a ruling or opinion from the
13 commissioner of the internal revenue service as to whether the defined contribution retirement plan
14 established pursuant to [this act] constitutes a "qualified plan" pursuant to section 401(a) of the Internal
15 Revenue Code.

16
17 NEW SECTION. Section 66. Rulemaking -- implementation -- certification that plan is effective.
18 (1) The public employees' retirement board may adopt rules necessary to implement the provisions of
19 [sections 42 through 64].

20 (2) The board shall certify to the governor and the secretary of state the date on which the
21 defined contribution retirement plan established pursuant to [sections 42 through 64] is ready to become
22 operational and shall provide a copy of the certification to the code commissioner.

23 (3) Rights under [sections 42 through 64] do not vest until the defined contribution retirement
24 plan becomes operational and is certified as provided in this section.

25
26 NEW SECTION. Section 67. Payment of local government administration expenses. To the extent
27 that a local government unit is required to incur administrative expenses to start the defined contribution
28 retirement plan that exceed the amount provided in 1-2-112(4)(a), the expenses must be paid by the
29 public employees' retirement board as defined contribution plan administrative expenses.
30

1 **NEW SECTION. Section 68. Appropriation -- repayment.** (1) (a) To pay the startup costs of the
2 defined contribution retirement plan, there is appropriated from the general fund to the public employees'
3 retirement board for the biennium ending June 30, 2001, \$2.93 million to be deposited to the account
4 for paying administrative expenses for the defined contribution plan established pursuant to [this act].

5 (b) Of the amount appropriated under subsection (1)(a):

6 (i) up to \$250,000 must be used for the initial transfer educational program provided in [section
7 41];

8 (ii) up to \$200,000, plus any amount not spent pursuant to subsection (1)(b)(i), must be used for
9 consulting services and vendor searches; and

10 (iii) up to \$2.48 million, plus any amount not spent pursuant to subsection (1)(b)(ii), may be used
11 for other startup costs of the defined contribution retirement plan.

12 (2) Of the appropriation under subsection (1), \$2.48 million must be repaid over a reasonable
13 amount of time to the general fund from defined contribution retirement plan assets as provided in
14 [section 46].

15
16 **NEW SECTION. Section 69. Codification instruction.** (1) [Section 40] is intended to be codified
17 as an integral part of Title 19, chapter 2, parts 7 and 11; and Title 19, chapter 3, parts 5, 9 through 12,
18 and 15, and the provisions of Title 19, chapter 2, parts 7 and 11; and Title 19, chapter 3, parts 5, 9
19 through 12, and 15, apply to [section 40].

20 (2) [Section 41] is intended to be codified as an integral part of Title 19, chapter 3, part 1, and
21 the provisions of Title 19, chapter 3, part 1, apply to [section 41].

22 (3) [Sections 42 through 64] are intended to be codified as an integral part of Title 19, chapter 3,
23 and the provisions of Title 19, chapter 3, apply to [sections 42 through 64].

24
25 **NEW SECTION. Section 70. Coordination instruction.** If __ Bill No. __ [LC0567] is passed and
26 approved and if it provides for the continuation of the committee on public employee retirement systems
27 provided for in Title 5, chapter 21, then the phrase "legislative council shall provide for an appropriate
28 interim legislative committee" as it appears in [section 64] of [this act] is replaced with the phrase
29 "committee on public employee retirement systems provided for in Title 5, chapter 21".
30

1 NEW SECTION. Section 71. Saving clause. [This act] does not affect rights and duties that
2 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
3 act].

4
5 NEW SECTION. Section 72. Severability. If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9
10 NEW SECTION. Section 73. Effective dates. (1) Except as provided in subsections (2) through
11 (4), [this act] is effective October 1, 1999.

12 (2) [Sections 3, 11, 20 through 22, 43(2) and (3), 44, 45, 55(1) through (3) and (7), 61, 62, 65,
13 66, 69 through 72, and 74 and this section] are effective on passage and approval.

14 (3) [Sections 34, 41(1)(a), (1)(b), and (2) through (6), 46, 63, 64, 67, and 68] are effective July
15 1, 1999.

16 (4) [Sections 2, 4 through 10, 12 through 19, 23 through 40, 41(1)(c), 43(1), 47 through 54,
17 55(4) through (6), and 56 through 60] are effective contingent upon certification, as provided in [section
18 66], that the defined contribution retirement plan is ready to become operational or on July 1, 2002,
19 whichever is earlier.

20
21 NEW SECTION. Section 74. Termination. (1) [Sections 62 and 64] terminate July 1, 2001.

22 (2) [Section 61] terminates July 1, 2002.

23 - END -

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Appendix A

The following is a copy of House Bill No. 90, which directed the study culminating in the recommendations summarized in this report.

House Bill No. 90 (Ch. 191) 1997 Legislative Session

INTRODUCED BY WISEMAN

By Request of the Committee on Public Employee Retirement Systems

A BILL FOR AN ACT ENTITLED: AN ACT DIRECTING A COMMITTEE DESIGNATED BY THE LEGISLATIVE COUNCIL TO DESIGN A RETIREMENT PLAN TO REPLACE OR MODIFY THE CURRENT PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REQUIRING THAT THE COMMITTEE DEVELOP LEGISLATION AND AN IMPLEMENTATION PLAN FOR THE 56TH LEGISLATURE; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Development and implementation of new or modified public employees' retirement system.

(1) A committee designated by the legislative council pursuant to 5-5-211 shall design a public employees' retirement plan to replace or modify the current public employees' retirement system provided for in Title 19, chapter 3.

(2) The new or modified retirement plan must be designed to provide for the following:

(a) increased portability of contributions;

(b) increased flexibility to allow plan members a choice in:

(i) selecting, from a group of set amounts, the amount of the member's contribution to the retirement plan;

(ii) directing investments; and

(iii) selecting the form of the benefit payout; and

(c) a retirement plan component that will provide for a specified benefit in retirement.

(3) (a) In designing the new or modified retirement plan, the committee shall involve employers, employees, members of the current public employees' retirement system, retirement plan administrators, policymakers, and other interested parties.

(b) The committee shall also gather and analyze information on the amount of state income tax revenue collected from the state's taxation of retirement benefits, consider this information in developing new or modified retirement benefits, and report the committee's findings to the 56th legislature.

(4) The committee shall establish an implementation schedule for conversion to the new or modified retirement plan. The retirement plan design and the implementation schedule, including any implementing legislation, must be presented to the 56th legislature. The retirement plan design and implementation schedule must include but is not limited to:

(a) how the new or modified retirement plan is to be administered;

(b) the costs associated with the conversion;

(c) a timetable for implementation; and

(d) a preconversion and postconversion education plan for informing policymakers, administrative staffs, executive staffs, interagency staffs, employers, employees, retirement plan members, taxpayers, and other interested parties about the new or modified retirement plan.

(5) The committee may contract for consultant services.

Section 2. Appropriation. There is appropriated from the general fund to the legislative services division \$80,000 for use by the committee designated by the legislative council under [section 1].

Section 3. Coordination instruction. If ___ Bill No. ___ [LC 0381] is passed and approved and if it repeals or extends the sunset on the committee on public employee retirement systems, then "A committee designated by the legislative council pursuant to 5-5-211" as it appears in [section 1 of this act] and "the committee designated by the legislative council under [section 1]" as it appears in [section 2 of this act] shall read "the committee on public employee retirement systems".

Section 4. Effective date. [This act] is effective July 1, 1997.

-END-

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