

## HOUSE BILL NO. 63

INTRODUCED BY T. DELL

BY REQUEST OF THE STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS'  
AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A DISABILITY BENEFIT FOR MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM IN THE DEFINED CONTRIBUTION RETIREMENT PLAN; PROVIDING FUNDING FROM CURRENT EMPLOYER CONTRIBUTIONS; REQUIRING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO DEVELOP A LONG-TERM DISABILITY PLAN AND A TRUST FUND THROUGH WHICH BENEFITS ARE PAID; AUTHORIZING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO RECEIVE A LOAN FROM THE BOARD OF INVESTMENTS TO PAY FOR STARTUP COSTS; CREATING A STATE DEBT; AMENDING SECTIONS 19-2-303, 19-2-406, 19-3-2117, ~~AND 19-3-2121, 19-3-2123, 19-3-2124, AND 19-3-2126~~, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. ~~Disability benefits~~ -- LONG-TERM DISABILITY PLAN -- BENEFIT amount -- eligibility -- ADMINISTRATION AND rulemaking.** (1) A disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's final average salary, as defined in 19-3-108, multiplied by the member's years of service, including any service CREDIT purchased under 19-3-513.

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

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

(b) the benefit may be paid only until the member reaches 60 years of age; and

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

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

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

(5) IF A MEMBER RECEIVING A DISABILITY BENEFIT UNDER THIS SECTION DIES, THE DISABILITY BENEFIT PAYMENTS CEASE AND THE MEMBER'S BENEFICIARY IS ENTITLED TO DEATH BENEFITS ONLY AS PROVIDED FOR IN 19-3-2125.

(6) THE BOARD SHALL ESTABLISH A LONG-TERM DISABILITY PLAN TRUST FUND FROM WHICH DISABILITY BENEFIT COSTS PURSUANT TO THIS SECTION MUST BE PAID. THE TRUST FUND MUST BE ENTIRELY SEPARATE AND DISTINCT FROM THE DEFINED BENEFIT PLAN TRUST FUND.

~~(5)(7)~~ The board shall PERFORM THE DUTIES, EXERCISE THE POWERS, AND adopt reasonable rules to implement the provisions of this section.

NEW SECTION. SECTION 2. DISABILITY BENEFIT RECIPIENTS TO REMAIN MEMBERS -- ACCESS TO ACCOUNT PROHIBITED. A PLAN MEMBER WHO IS RECEIVING A DISABILITY BENEFIT PURSUANT TO [SECTION 1] REMAINS A MEMBER OF THE RETIREMENT PLAN IRRESPECTIVE OF EMPLOYMENT STATUS AND MAY NOT RECEIVE A DISTRIBUTION FROM THE MEMBER'S RETIREMENT ACCOUNT.

**Section 3.** Section 19-2-303, MCA, is amended to read:

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

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

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

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

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

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

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

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

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject

to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

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

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

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

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

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

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

(16) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer.

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

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

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

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

(20) "Inactive member" means a member who is not an active or retired member.

(21) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(22) "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

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

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

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

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

(27) "Regular contributions" means contributions required from members under a retirement system.

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

(29) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement system.

(30) "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

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

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

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

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

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

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

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

(38) "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

(39) "Written application" means a written instrument, specified by the board, properly executed, and filed with the board, that contains all the information required by the board, including documentation that the board considers necessary.

**19-2-303. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**  
**Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Account balance" means all contributions, income, and other assets in a retirement account that have, pursuant to 19-3-2116, vested to a member of the defined contribution plan.

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

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

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

(5) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

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

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

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

(9) "Annuity" means:

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

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

(10) "Benefit" means:

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

(b) a payment or distribution under the defined contribution retirement plan, INCLUDING A DISABILITY PAYMENT UNDER [SECTION 1], for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

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

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

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

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

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

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

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

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

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

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

(21) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer.

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

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

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

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

(25) "Inactive member" means a member who is not an active or retired member.

(26) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(27) "Member" means either:

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

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

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

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

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

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities ~~and~~ AND the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan, ~~and the defined contribution plan disability benefits provided in section 4.~~

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

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

(35) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

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

(37) "Retirement benefit" means:

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

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

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

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

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

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

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

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

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

(45) "Vested member" or "vested" means:

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

(b) with respect to the defined contribution plan, a member or the status of a member who, pursuant to 19-3-2116, is entitled to employer contributions and income on those contributions in the member's retirement account.

(46) "Written application" means a written instrument, specified by the board, properly executed, and filed with the board, that contains all the information required by the board, including documentation that the board considers necessary."

**Section 4.** Section 19-2-406, MCA, is amended to read:

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

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

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling

conditions while reviewing claims for disability retirement.

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

**19-2-406. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Determination of disability by board -- compliance with federal law -- conversion to service retirement benefit -- rules.** (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement.

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

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

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

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

**Section 5.** Section 19-3-2117, MCA, is amended to read:

**"19-3-2117. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Allocation of contributions and forfeitures.** (1) Each plan member's retirement account must be credited with the employee contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316:

- (a) ~~4.49%~~ ~~4.06%~~ 4.19% of compensation must be allocated to the member's retirement account; and
- (b) ~~2.37%~~ ~~2.80%~~ 2.37% of compensation must be allocated to the defined benefit plan as the plan choice

rate, ~~which includes 0.43% of compensation for disability benefits provided in [section 1].~~

(3) SUBJECT TO ADJUSTMENT BY THE BOARD PURSUANT TO 19-3-2121(7) AND BEGINNING ON THE PLAN'S EFFECTIVE DATE, OF THE EMPLOYER CONTRIBUTIONS UNDER 19-3-316, 0.3% OF COMPENSATION MUST BE ALLOCATED TO THE LONG-TERM DISABILITY PLAN TRUST FUND ESTABLISHED PURSUANT TO [SECTION 1].

~~(3)~~(4) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions."

**Section 6.** Section 19-3-2121, MCA, is amended to read:

**"19-3-2121. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Determination and adjustment of plan choice rate and contribution allocations -- rulemaking.** (1) The board shall provide for the periodic review of the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall provide that the data necessary to comply with this section is collected and maintained for all system members.

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

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

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

(c) as determined under subsection (5), the sufficiency of the plan choice rate to actuarially fund the defined contribution ~~plan's~~ PLAN MEMBER'S APPROPRIATE share of the defined benefit plan's unfunded liabilities; ~~and~~ and.

~~(d) the sufficiency of the plan choice rate to actuarially fund the disability benefits provided in [section 1].~~

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the covered payroll of members in the defined benefit plan,

divided by the covered payroll of members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The anticipated reduction in defined contribution plan costs as a result of forfeitures under 19-3-2116 must be determined as the amount of forfeitures expected during the next biennium based on actual forfeitures in the preceding biennium, adjusted by taking into account the gains or losses during the preceding biennium resulting from forfeitures of greater or lesser amounts than expected, divided by twice the covered payroll of members of the defined contribution plan.

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

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

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

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

(7) IF THE BOARD DETERMINES THAT THE CONTRIBUTION RATE TO THE DISABILITY PLAN UNDER 19-3-2117(3)

SHOULD BE INCREASED, THE EMPLOYER CONTRIBUTION TO EACH MEMBER'S ACCOUNT UNDER 19-3-2117(2)(A) MUST BE DECREASED BY THAT AMOUNT. IF THE BOARD DETERMINES THAT THE CONTRIBUTION RATE TO THE DISABILITY PLAN UNDER 19-3-2117(3) SHOULD BE DECREASED, THE EMPLOYER CONTRIBUTION TO EACH MEMBER'S ACCOUNT UNDER 19-3-2117(2)(A) MUST BE INCREASED BY THAT AMOUNT.

~~(7)~~(8) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

~~(8)~~(9) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

**SECTION 7. SECTION 19-3-2123, MCA, IS AMENDED TO READ:**

**"19-3-2123. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Payout of account balances when terminating plan membership.** ~~Any~~ Except as provided in [section 2], any time after termination of covered employment, a member or the member's beneficiary may terminate plan membership by making a written application to the board and removing the member's account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

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

**SECTION 8. SECTION 19-3-2124, MCA, IS AMENDED TO READ:**

**"19-3-2124. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Distribution options for plan members -- rulemaking -- minimum distribution requirements -- restrictions.**

(1) Subject to 19-3-2116 ~~and~~, 19-3-2126, and [section 2], a member may, after termination of covered employment, leave the member's account balance in the plan, and the member is eligible for a distribution as provided in this section.

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

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

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

**SECTION 9. SECTION 19-3-2126, MCA, IS AMENDED TO READ:**

**"19-3-2126. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Minimum account balance required for membership after termination -- adjustment by rule.** (1) (a) ~~If Except as provided in [section 2], if~~ a member's account balance is less than \$5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.

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

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

**NEW SECTION. SECTION 10. IMPLEMENTATION. (1) TO IMPLEMENT THE PROVISIONS OF [SECTION 1], THE BOARD SHALL ESTABLISH A SELF-INSURED LONG-TERM DISABILITY PLAN THROUGH WHICH THE DISABILITY BENEFITS MUST BE PAID.**

**(2) IF THE DISABILITY PLAN CANNOT BE IMPLEMENTED AS DESCRIBED IN SUBSECTION (1), THE BOARD SHALL IMPLEMENT THE PROVISIONS OF [SECTION 1] BY CONTRACTING FOR LONG-TERM DISABILITY INSURANCE THAT PROVIDES FOR THE BENEFITS DESCRIBED IN [SECTION 1].**

**NEW SECTION. Section 11. Loan for startup -- repayment.** To pay the startup costs for the defined contribution plan disability benefit established pursuant to [section 1], the public employees' retirement board may receive a long-term loan from the intercap revolving loan program adopted by the board of investments pursuant to 17-5-1605. The loan must be repaid with interest under terms and conditions determined by the board of

investments.

**NEW SECTION. SECTION 12. TWO-THIRDS VOTE REQUIRED.** BECAUSE [SECTION 11] AUTHORIZES THE CREATION OF A STATE DEBT, ARTICLE VIII, SECTION 8, OF THE MONTANA CONSTITUTION REQUIRES A VOTE OF TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.

**NEW SECTION. Section 13. Codification instruction.** [Section 4] is [SECTIONS 1, 2, AND 10 ARE] intended to be codified as an integral part of Title 19, chapter 3, part 21, and the provisions of Title 19, chapter 3, part 21, apply to [section 4] [SECTIONS 1, 2, AND 10].

**NEW SECTION. SECTION 14. COORDINATION INSTRUCTION.** (1) IF SENATE BILL NO. 306 IS PASSED AND APPROVED AND IF IT INCLUDES LANGUAGE PROVIDING FOR A DISABILITY BENEFIT EQUAL TO ONE-FIFTIETH OF THE MEMBER'S FINAL AVERAGE SALARY MULTIPLIED BY THE MEMBER'S YEARS OF TOTAL SERVICE CREDIT, THEN [SECTION 1(1) OF THIS ACT] IS AMENDED TO READ:

"(1) (A) EXCEPT AS PROVIDED IN SUBSECTION(1)(B), A DISABLED MEMBER ELIGIBLE UNDER THE PROVISIONS OF THIS SECTION IS ENTITLED TO A DISABILITY BENEFIT EQUAL TO ONE FIFTY-SIXTH OF THE MEMBER'S FINAL AVERAGE SALARY, AS DEFINED IN 19-3-108, MULTIPLIED BY THE MEMBER'S YEARS OF SERVICE, INCLUDING ANY SERVICE CREDIT PURCHASED UNDER 19-3-513.

(B) AN ELIGIBLE MEMBER WITH AT LEAST 25 YEARS OF SERVICE CREDIT IS ENTITLED TO A DISABILITY BENEFIT EQUAL TO ONE-FIFTIETH OF THE MEMBER'S FINAL AVERAGE SALARY, AS DEFINED IN 19-3-108, MULTIPLIED BY THE MEMBER'S YEARS OF SERVICE CREDIT, INCLUDING ANY SERVICE CREDIT PURCHASED UNDER 19-3-513."

(2) IF HOUSE BILL NO. 116 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN:

(A) [SECTION 5 OF THIS ACT], AMENDING 19-3-2117, IS AMENDED TO READ:

**"19-3-2117. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Allocation of contributions and forfeitures.** (1) Each plan member's retirement account must be credited with the employee contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, an amount equal to:

(a) ~~4.49%~~ 4.19% of compensation must be allocated to the member's retirement account; ~~and~~

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

and

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(c).

(3) Subject to adjustment by the board pursuant to 19-3-2121(7) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to [section 1].

(4) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions plan's administrative expenses, including startup expenses."

(B) [SECTION 9 OF THIS ACT], AMENDING 19-3-2126, IS AMENDED TO READ:

**"19-3-2126. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Minimum Refunds -- minimum account balance required for membership after termination -- adjustment by rule.** (1) ~~(a) If a member's account balance is less than \$5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.~~

~~———— (b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance. Before termination of service, a member may not receive a refund of any portion of the member's vested account.~~

(2) Except as provided in [section 2], a nonvested member who terminates from service and whose vested account balance is less than \$200 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination without a written application from the member.

(3) Except as provided in [section 2], unless a written application is made pursuant to subsection (4)(a), a nonvested member who terminates from service and whose vested account balance is between \$200 and \$5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination.

(4) (a) Except as provided in [section 2], upon the written application of a terminating member whose vested account balance is \$200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, a retirement

plan that allows the rollover and is qualified under applicable federal law. The direct rollover distribution must be paid directly to the qualified retirement plan.

(b) Except as provided in [section 2], the amount of the member's vested account balance not eligible for a direct rollover distribution under subsection (4)(a) must be paid to the member in a lump sum.

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

NEW SECTION. Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. SECTION 16. CONTINGENT VOIDNESS. IF THE DEFINED CONTRIBUTION RETIREMENT PLAN ENACTED BY CHAPTER 471, LAWS OF 1999, CANNOT BE IMPLEMENTED BECAUSE OF AN UNFAVORABLE INTERNAL REVENUE SERVICE DETERMINATION OR RULING, THEN [THIS ACT] IS VOID.

NEW SECTION. Section 17. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1(1) through ~~(4)~~ (5) and sections 2 through 5 9] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier.

- END -

