

**Unofficial Draft Copy**

As of: November 21, 2006 (1:25pm)

LC0618

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the State Administration and Veterans' Affairs

Interim Committee

A Bill for an Act entitled: "An Act providing for the actuarial funding of the public employees', sheriffs', game wardens' and peace officers', and teachers' retirement systems; increasing employer contribution rates to certain retirement systems; revising definitions used in regard to the teachers' retirement system; revising the teachers' retirement system's regular interest rate; clarifying the maximum amount of compensation a retired member of the teachers' retirement system may earn under certain circumstances; requiring the school district board of trustees to contractually limit compensation under certain circumstances; establishing a supplemental employer contribution rate for employers of members of the teachers' retirement system; appropriating funds; amending sections 19-3-316, 19-3-2117, 19-3-2121, 19-7-404, 19-20-101, 19-20-102, 19-20-208, 19-20-409, 19-20-501, 19-20-605, 19-20-621, 19-20-716, 19-20-731, 19-21-214, and 20-3-324, MCA; and providing an effective date."

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

**Section 1.** Section 19-3-316, MCA, is amended to read:

**"19-3-316. Employer contribution rates.** (1) Each employer shall contribute to the system. Except as provided in ~~subsection~~

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~~(2) subsections (2) and (3),~~ the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees, except those properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

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

(3) Except for individuals who are properly excluded from membership, in addition to the contribution required under subsection (1), each employer shall contribute to the system a sum equal to:

(a) 0.56% of the total compensation paid to all of the employer's employees for the period beginning July 1, 2007, through June 30, 2009; and

(b) 1.13% of the total compensation paid to all of the employer's employees beginning July 1, 2009.

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

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{ Internal References to 19-3-316:

19-3-108            19-3-112            19-3-511            19-3-2117  
19-21-214        20-9-501    ok/ddb }

**Section 2.** Section 19-3-2117, MCA, is amended to read:

**"19-3-2117. Allocation of contributions and forfeitures.**

(1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to adjustment by the board as provided in 19-3-2121, of the employer contributions received under 19-3-316 ~~received on or after July 1, 2002~~, an amount equal to:

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

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

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

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

(b) (i) beginning July 1, 2007, through June 30, 2008, 0.56% of compensation must be allocated to the defined benefit plan to minimize the plan choice rate;

(ii) beginning July 1, 2008, 1.13% of compensation must be allocated to the defined benefit plan to minimize the plan choice rate.

(3) 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 plan's administrative expenses, including startup expenses."

{ Internal References to 19-3-2117:

19-2-303	19-2-405	19-3-315	19-3-316
19-3-2114	19-3-2114	19-3-2114	19-3-2116
19-3-2121	19-3-2121	19-3-2121	19-3-2121
19-3-2121	19-3-2121	19-3-2121	19-3-2121
19-3-2121	19-3-2121	19-3-2121	19-3-2126
19-3-2126	ok/ddb}		

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

**"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.** (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117~~(2)(b)~~(2)(a)(ii) 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; and

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

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the 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 compensation paid to all of the members in the defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan. The measurements under this subsection must be based on the 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 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.

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(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 amount provided in subsection (2)(a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

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

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

plan under 19-3-2117(2)(d)(2)(a)(iv) should be decreased, the employer contribution to each member's account under 19-3-2117(2)(a)(i) must be increased by that amount.

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

(8) Effective January 1 of the year after the regular or special 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."

{Internal References to 19-3-2121:

19-2-303            19-2-407            19-3-2117            19-21-214 ok/ddb}

**Section 4.** Section 19-7-404, MCA, is amended to read:

**"19-7-404. Employer contributions.** (1) The employer shall pay ~~9.535%~~ the following amounts of the compensation paid to all of the employer's employees, except those properly excluded from membership:

(a) 9.535% through June 30, 2007;

(b) 10.205% beginning July 1, 2007, through June 30, 2009;

and

(c) 11.585% beginning July 1, 2009..

(2) If the required contribution to the retirement system

exceeds the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget, levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation."

{*Internal References to 19-7-404: None. ok/ddb*}

**Section 5.** Section 19-20-101, MCA, is amended to read:

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

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

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

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned



compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6) (b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

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

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

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

(b) Earned compensation does not mean:

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

(ii) any direct employer payment or reimbursement for:

- (A) professional membership dues;
- (B) maintenance;
- (C) housing;
- (D) day care;
- (E) automobile, travel, lodging, or entertaining expenses;

or

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

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

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

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

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

(e) Earned compensation does not include:

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

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

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

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

(8) "Full-time service" means service that is ~~full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year at least 180 days in a fiscal year or at least 140 hours per month.~~

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

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

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

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

(b) without disability; and

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

(12) "Part-time service" means service that is less than full-time service or and that totals less than 180 days in a ~~normal academic~~ fiscal year or 140 hours in a month. Part-time

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service must be credited in the proportion that the actual time worked compares to full-time service.

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

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

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

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

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

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

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

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

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

(b) Termination pay does not include:

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

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

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602, and 19-20-605, and [section 16], and who has a right to a future retirement benefit.

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

{Internal References to 19-20-101:  
19-20-602 ok/ddb}

**Section 6.** Section 19-20-102, MCA, is amended to read:

**"19-20-102. Retirement system -- policy.** The state

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teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is hereby ~~recognized as~~ the state teachers' retirement system of the state of Montana, and ~~no~~ the provisions of this chapter ~~shall~~ do not affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment ~~thereto~~ to this chapter. ~~Such~~ The state teachers' retirement system ~~shall be~~ is known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have ~~such~~ the powers and privileges of a corporation that may be necessary to ~~carry into effect~~ administer the provisions of this chapter.

(2) It is the policy of the state to:

(a) provide equitable retirement benefits to members of the teachers' retirement system based on each member's normal service and salary;

(b) limit the effect on the retirement system of isolated salary increases received by a member through events including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and

(c) limit the total compensation, including fringe benefits, that a retired member may earn after retirement in a position that would normally be included in the teachers' retirement system to the amount determined under 19-20-731(1)(a)."

{*Internal References to 19-20-102:*

19-20-101 ok/ddb}

**Section 7.** Section 19-20-208, MCA, is amended to read:

**"19-20-208. Duties of employer.** Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer's ~~contribution~~ contributions prescribed by 19-20-605 and [section 16], at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5) each month, report the name, social security number, and gross earnings of each retired member of the system who has been employed in a part-time teaching, administrative, or faculty position under the reemployment provisions of 19-20-731;

(6) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(7) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(8) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board;

(9) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement."

{*Internal References to 19-20-208: None. ok/ddb*}

**Section 8.** Section 19-20-409, MCA, is amended to read:

**"19-20-409. Transfer of service credits and contributions from public employees' retirement system.** (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement



system, based on the interest tables in use by the public employees' retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has creditable service in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and

service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602, ~~and~~ 19-20-605, and [section 16] plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A vested member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, prior to becoming a member of the teachers' retirement system may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member has completed at least 1 full year in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase

service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system."

{*Internal References to 19-20-409:*

19-20-401

19-20-804

19-20-805

19-20-902 ok/ddb}

**Section 9.** Section 19-20-501, MCA, is amended to read:

**"19-20-501. Financial administration of money.** The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest. The rate established by the board may not be less than ~~4%~~ 0%.

(3) The retirement board shall annually divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-20-605(5), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to

administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."

{*Internal References to 19-20-501:*  
19-20-101      19-20-201 ok/ddb}

**Section 10.** Section 19-20-605, MCA, is amended to read:

**"19-20-605. Pension accumulation fund -- employer's contribution.** The pension accumulation fund is the fund in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation fund must be made as follows:

(1) Each employer shall pay into the pension accumulation

fund:

(a) an amount equal to 7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period; and

(b) the amount required to be paid under [section 16] as a supplemental employer contribution.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund must be transferred to that fund from the pension accumulation fund.

(6) The retirement board may transfer from the pension accumulation fund to the expense fund an amount necessary to cover expenses of administration."

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{ Internal References to 19-20-605:

19-20-101      19-20-208      19-20-409      19-20-501  
19-20-716 ok/ddb }

**Section 11.** Section 19-20-621, MCA, is amended to read:

**"19-20-621. Montana university system optional retirement program supplemental contributions.** (1) Each employer within the university system with employees participating in the optional retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The optional retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program ~~must increase to~~ is:

~~(a) 2.81% beginning July 1, 1997;~~

~~(b) 3.12% beginning July 1, 1998;~~

~~(c) 3.42% beginning July 1, 1999;~~

~~(d) 3.73% beginning July 1, 2000; and~~

~~(e) (a) 4.04% beginning July 1, 2001 through June 30, 2007;~~

and

(b) 4.72% beginning July 1, 2007.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033."

{ Internal References to 19-20-621:

19-21-203 ok/ddb}

**Section 12.** Section 19-20-716, MCA, is amended to read:

**"19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (4) and (5), by signing a binding, irrevocable written election at least 90 days before the member's termination date, one of the following options:

(a) Option 1--The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2--The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602, ~~and~~ 19-20-605(1)(a), ~~and~~ [section 16]. The contributions must be made at the time of termination.

(c) Option 3--The member may exclude the termination pay from the average final compensation. A contribution is not

required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and



(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections (4) and (5).

(4) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(5) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

{ Internal References to 19-20-716:  
19-20-101      19-20-101      19-20-101      19-20-602  
19-20-715 ok/ddb }

**Section 13.** Section 19-20-731, MCA, is amended to read:

**"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits.** (1) (a) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

~~(a)~~(i) one-third of the sum of the member's average final

compensation; or

~~(b)(ii)~~ one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purpose of this subsection (1), the maximum compensation a retired member may earn under subsection (1)(a), without an adjustment of retirement benefits, includes all remuneration paid to the retired member, including annuities and all allowances for motor vehicles and housing, plus the value of all taxable fringe benefits, including but not limited to:

(i) professional membership dues;

(ii) maintenance;

(iii) day care;

(iv) reimbursements for nonwork-related motor vehicle, travel, lodging, or entertaining expenses; or

(v) any similar payment for any form of maintenance, allowance, or expense.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by

\$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be

increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled."

{*Internal References to 19-20-731:*  
19-20-208      19-20-302 ok/ddb}

**Section 14.** Section 19-21-214, MCA, is amended to read:

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

(1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

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

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

(2) Subject to subsection (3), the employer's contribution under subsection (1)(b) must be allocated as follows:

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

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

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

(b) (i) beginning July 1, 2007, through June 30, 2009, 0.56% of compensation must be allocated to the defined benefit plan to minimize the plan choice rate;

(ii) beginning July 1, 2009, 1.13% of compensation must be allocated to the defined benefit plan to minimize the plan choice rate.

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

{*Internal References to 19-21-214:*  
*19-21-203 ok/ddb*}

**Section 15.** Section 20-3-324, MCA, is amended to read:

**"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as

the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial

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administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

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(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(23) procure and display outside daily in suitable weather



on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(24) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(25) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(26) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(27) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(28) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(29) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and

(30) negotiate preretirement and postretirement contracts that limit compensation included in the calculation of average final compensation and limit compensation earnable in a

postretirement position, without an adjustment of retirement benefits, as provided in 19-20-731; and

~~(30)~~(31) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

{Internal References to 20-3-324:  
20-3-362 ok/ddb}

NEW SECTION. **Section 16. Supplemental employer**

**contribution rate.** (1) Each employer shall pay into the pension accumulation fund as a supplemental employer contribution the following amounts of the earned compensation of each member for all of the employer's employees who are members of the system that are employed during the whole or part of the preceding payroll period:

- (a) beginning July 1, 2007, through June 30, 2009, 0.94%;
- (b) beginning July 1, 2009, through June 30, 2011, 1.88%;
- (c) beginning July 1, 2011, through June 30, 2013, 2.82%;

and

- (d) beginning July 1, 2013, 3.76%.

(2) The board shall periodically review the supplemental employer contribution rate provided in this section and recommend to the legislature adjustments needed to maintain the amortization of unfunded liabilities in an actuarially sound manner.

NEW SECTION. **Section 17. Appropriations.** (1) The following money is appropriated for the biennium ending June 30, 2009, to implement the retirement system state employer contribution rate increases provided for in [this act]:

Fiscal Year 2008		Fiscal Year 2009	
General Fund	Other Funds	General Fund	Other Funds
Legislative Branch			

(2) There is appropriated from the general fund to the public employees' retirement board:

(a) \$1.4 million to be used for repaying the loan for startup costs of the defined contribution retirement plan;

(b) \$11.5 million to be deposited to the credit of the sheriffs' retirement system;

(c) \$1.2 million to be deposited to the credit of the game wardens' and peace officers' retirement system; and

(d) \$10.9 million to be deposited to the credit of the public employees' retirement system's defined benefit plan.

(3) There is appropriated \$100 million from the general fund to the teachers' retirement system's defined benefit plan.

NEW SECTION. **Section 18. {standard} Codification instruction.** [Section 16] is intended to be codified as an integral part of Title 19, chapter 20, part 3, and the provisions of Title 19, chapter 20, part 3, apply to [section 16].

NEW SECTION. **Section 19. {standard} Effective date.** [This act] is effective July 1, 2007.

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