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SECTION 9. Title 36 of the General Laws entitled "PUBLIC OFFICERS AND EMPLOYEES" is hereby amended by adding thereto the following chapter:

**CHAPTER 10.3
DEFINED CONTRIBUTION RETIREMENT PLAN**

36-10.3-1. Definitions. – As used in this chapter, the following terms, unless the context requires a different interpretation, shall have the following meanings:

- (1) "Compensation" means compensation as defined in section 36-8-1(8).
- (2) "Employee" means an employee as defined in section 36-8-1(9) effective July 1, 2012.
- (3) "Employer" means the State of Rhode Island or the local municipality which employs a member of the Employees Retirement System under chapters 8 through 10 of title 36 or chapter 16 of title 16 (ERS) or the Municipal Employees Retirement System under chapters 21 and 21.2 of title 45 (MERS).
- (4) "Plan" means the retirement plan established by this chapter.
- (5) A "public safety member" shall mean a member of MERS who is a municipal fire fighter or a municipal policeman or policewoman as defined in section 45-21.2-2 who does not participate in Social Security under the Federal Old Age, Survivors, and Disability income program.
- (6) "Regular member" means: (i) An employee who is a member of ERS other than correctional officers as defined in section 36-10-9.2; or (ii) A member of MERS other than a public safety member.
- (7) The "retirement board" or "board" shall mean the retirement board of the Employees Retirement System of Rhode Island as defined in Chapter 36-8. The retirement board shall be the plan administrator and plan trustee and shall administer the plan in accordance with section 36-8-4.1.
- (8) "State investment commission" or "commission" means the state investment commission as defined in section 35-10-1.
- (9) "Supplemental employer" includes any employer that provides supplemental contributions to the defined contribution retirement plan as provided in section 36-10.3-3.
- (10) "Supplemental member" is defined in section 36-10.3-3.

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36-10.3-2. Establishment. – (1) A defined contribution retirement plan is established for members of the of the Employees’ Retirement System of Rhode Island (ERS) and the Municipal Employees’ Retirement System of Rhode Island (MERS).

(2) The defined contribution retirement plan is a plan in which retirement savings are accumulated in an individual account for the exclusive benefit of the member or beneficiaries. The plan is established effective July 1, 2012, at which time contributions by employers and members begin.

(3) The defined contribution plan established by this chapter is intended to qualify under 26 U.S.C. 401(a), 414(d), and 414(k) (Internal Revenue Code) in effect from time to time as a qualified governmental retirement plan established and maintained by the state for its employees, for the employees of participating political subdivisions, public corporations, and public organizations of the state, and for the employees of other employers whose participation is authorized by this chapter.

(4) (a) *Exclusive benefit.* All funds of the plan shall be held in one or more trusts, in one or more custodial accounts treated as trusts in accordance with section 401(f) of the Internal Revenue Code, or in a combination thereof. Under any trust or custodial account, it shall be impossible at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the payment of retirement savings benefits to employees and their beneficiaries. However, this requirement shall not prohibit: (i) The return of a contribution within six (6) months after the plan administrator determines that the contribution was made by a mistake of fact; or (ii) The payment of expenses of the plan in accordance with applicable law.

(b) *Vesting on plan termination.* In the event of the termination (within the meaning of the Internal Revenue Code) of the plan, the amounts credited to members’ accounts shall become fully and immediately vested.

(c) *Forfeitures.* Amounts forfeited by an employee shall not be applied to increase the benefits of any other employee, and shall reduce employer contributions as shall be set forth in the plan document.

(d) *Required distributions.* In no event shall a member receive contributions in any year that exceed the limitation set forth in section 415(c) of the Internal Revenue Code.

(e) *Limitation on benefits.* Benefits shall not be payable to the extent that they exceed the limitations imposed by section 415 of the Internal Revenue Code, 26 U.S.C. section 415, as

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adjusted from time to time pursuant to section 415(d) of the Internal Revenue Code. In no event shall the member receive a retirement benefit in any year that exceeds the limitations set forth in section 415(b) of the Internal Revenue Code.

(f) *Limitation on compensation.* Benefits and contributions shall not be computed with reference to any compensation that exceeds the maximum dollar amount permitted by section 401(a)(17) of the Internal Revenue Code as adjusted for increases in the cost-of-living.

(5) The state investment commission shall select an appropriate third-party administrator for the plan and shall adopt such plan, trust and/or custodial documents, with such features and attributes as the commission determines necessary or advisable in its discretion to effectuate the provisions of this chapter in accordance with the following:

(a) The commission shall select one or more firm(s) or company(ies) to provide retirement plan investment, plan administration, and communication services to employees who participate in the defined contribution plan. The plan shall provide for appropriate long-term retirement oriented investments, and shall include annuity or annuity-like options as determined by the commission. In determining the firm or the company to provide these plan services, the commission shall consider all of the following:

- (i) The financial stability of the company or firm.
- (ii) The cost of the investments, plan administration, and services to the members.
- (iii) The experience of the company or firm in providing defined contribution retirement plans.
- (iv) The experience of the company or firm in providing plan education, counseling, and advice to participants of defined contribution plans.
- (v) Any criminal convictions, securities or antitrust law violations, material civil or regulatory fines or judgments against the company or firm which the company or firm shall be required to disclose to the commission as part of the selection process.

(b) The defined contribution retirement plan shall include an option that any disbursement of the accumulated assets in a participant's defined contribution plan account or accounts may be made as a life annuity. The defined contribution retirement plan may offer participants a menu of lifetime annuity options, either fixed or variable, or a combination of both.

(c) Accumulations in the defined contribution plan are intended to be for retirement purposes and loans or hardship distribution options permitted under the plan, if any, shall be structured for the primary purpose of this plan to support members in their retirement.

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(d) The plan shall provide education, counseling and objective employee-specific plan advice to employees.

(e) The plan shall include a limited number of investment options which shall include either: (i) Investment portfolio options that are constructed to reflect different risk profiles such as conservative, moderate and aggressive; and/or (ii) Options constructed to reflect different risk profiles that automatically reallocate and rebalance contributions as an employee ages.

36-10.3-3. Supplemental participation for local public employers. – Employers that include job positions, other than public safety positions, that do not participate in Social Security under the Federal Old Age, Survivors and Disability Income program, but which currently contribute to ERS or MERS on behalf of such positions, shall make supplemental contributions to the plan on behalf of regular members in such positions as a supplemental employer in accordance with subsection 36-10.3-6(a). A supplemental employer may request a different level of supplemental contributions in accordance with subsection 36-10.3-6(b) by an ordinance or resolution of its governing body. A regular member in such positions shall be referred to as a “supplemental member” in section 36-10.3-6.

36-10.3-4. Member contributions. – (1) Each regular member shall contribute to the member's individual account in the plan an amount equal to five percent (5%) of the member's compensation from July 1 to the following June 30.

(2) Each public safety member not participating in Social Security under the Federal Old Age, Survivors and Disability Income program, shall contribute to the member's individual account an amount equal to three percent (3%) of the member's compensation from July 1 to the following June 30.

(3) Contributions by supplemental members shall be governed by section 36-10.3-6.

(4) The employer shall deduct the contribution from the member's compensation at the end of each payroll period, and the contribution shall be credited by the plan to the member's individual account. The contributions shall be deducted from the member's compensation before the computation of applicable federal taxes and shall be treated as employer contributions under 26 U.S.C. 414(h)(2). A member shall not have the option of making the payroll deduction directly in cash instead of having the contribution picked up by the employer.

(5) Contributions of employees shall be made by payroll deductions. Every member shall

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be considered to consent to payroll deductions. It is of no consequence that a payroll deduction may cause the compensation paid in cash to an employee to be reduced below the minimum required by law. Payment of an employee's compensation, less payroll deductions, is a full and complete discharge and satisfaction of all claims and demands by the employee relating to remuneration of services during the period covered by the payment, except with respect to the benefits provided under the plan.

(6) Additional voluntary member contributions may be permitted in accordance with this section in such manner as determined in the discretion of the commission.

36-10.3-5. Employer contributions. – (1) An employer shall contribute to each regular member's individual account an amount equal to one percent (1%) of the member's compensation at the end of each payroll period from July 1 to the following June 30.

(2) An employer shall contribute to the individual account of each public safety member, not participating in Social Security under the Federal Old Age, Survivors and Disability Income program, an amount equal to three percent (3%) of the member's compensation from July 1 to the following June 30.

(3) Contributions by supplemental employers shall be governed by section 36-10.3-6.

36-10.3-6. Supplemental employer and member contributions. – (a) A supplemental member shall contribute to the member's individual account an amount equal to two percent (2%) of the member's compensation from July 1 to the following June 30 in addition to the requirements of section 36-10.3-4. For such members, a supplemental employer shall contribute to the member's individual account an amount equal to two percent (2%) of the member's compensation from July 1 to the following June 30 in addition to the requirements of section 36-10.3-5.

(b) A supplemental employer may request a different level of supplemental member contributions and supplemental employer contributions subject to the approval of the state investment commission.

36-10.3-7. Vesting of contributions. – (1) The total amount contributed by the member, including associated investment gains and losses, shall immediately vest in the member and is non-forfeitable.

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(2) The total amount contributed by the employer, including associated investment gains and losses, vests with the member and is nonforfeitable upon completion of three (3) years of contributory service. Service credited under ERS or MERS prior to the effective date of this plan shall be credited to members for vesting purposes.

36-10.3-8. Investments. – The state investment commission shall determine from time to time the investment options available under the plan and a member may direct his or her account among the investment options offered under the plan pursuant to the plan documents.

36-10.3-9. Distributions. – The plan documents shall specify the distribution options available under the plan which shall include a lump sum and rollover distribution option, and may include such installment, annuity, hardship, loan or death benefit options as determined by the state investment commission in its discretion subject to section 36-10.3-2(5).

36-10.3-10. Rollover contributions and distributions. – (1) An employee entering the plan may elect, at the time and in the manner prescribed by the administrator, to have all or part of a direct rollover distribution from an eligible retirement plan owned by the member paid directly into the member's individual account.

(2) Rollover contributions do not count as a purchase of membership service for the purpose of determining years of service.

(3) A distributee may elect, at the time and in the manner prescribed by the administrator, to have all or part of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in the direct rollover.

(4) In this section:

(a) "Direct rollover" means the payment of an eligible rollover distribution by the plan to an eligible retirement plan specified by a distributee who is eligible to elect a direct rollover;

(b) "Distributee" means a member, or a beneficiary who is the surviving spouse or domestic partner of the member, or an alternate payee:

(c) "Eligible retirement plan" means:

(i) An individual retirement account described in 26 U.S.C. 408(d)(3)(A);

(ii) An annuity plan described in 26 U.S.C. 403(a);

(iii) A qualified trust described in 26 U.S.C. 401(a);

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- (iv) An annuity plan described in 26 U.S.C. 403(b);
 - (v) A governmental plan described in 26 U.S.C. 457(b);
 - (vi) An individual retirement annuity defined in 26 U.S.C. 408(b); or
 - (vii) On or after January 1, 2008, a Roth IRA described in 26 U.S.C. 408A;
- (d) "Eligible rollover distribution" means a distribution of all or part of a total account to a distributee, except for:

(i) A distribution that is one of a series of substantially equal installments payable not less frequently than annually over the life expectancy of the distributee or the joint and last survivor life expectancy of the distributee and the distributee's designated beneficiary, as defined in 26 U.S.C. 401(a)(9);

(ii) A distribution that is one of a series of substantially equal installments payable not less frequently than annually over a specified period of ten (10) years or more;

(iii) A distribution that is required under 26 U.S.C. 401(a)(9);

(iv) The portion of any distribution that is not includable in gross income; however, a portion under this paragraph may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), to a qualified plan described in 26 U.S.C. 401(a) or 403(a), or to an annuity contract described in 26 U.S.C. 403(b), that agrees to separately account for amounts transferred, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income; and

(v) Other distributions that are reasonably expected to total less than two hundred dollars (\$200) during a year.

36-10.3-11. Annual report and statement. – The retirement board shall submit to the governor, the general treasurer, the auditor general, the speaker of the house of representatives and the president of the senate, on or before the first day of December of each fiscal year, an annual report including a financial statement of the plan for the fiscal year of the state next preceding said date. The retirement board shall cause to be published for distribution among the members of the system a financial statement summarizing the results of operations for the fiscal year. The report and financial statement shall also be posted electronically on the retirement board's website.

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36-10.3-12. Severability. – The holding of any section or sections or parts hereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part hereof.