

1 HOUSE BILL NO. 226
 2 INTRODUCED BY T. MOORE, J. HAMILTON, D. FERN, S. VINTON, B. MERCER, T. MCGILLVRAY, D. LENZ,
 3 T. FALK, J. TREBAS

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE PUBLIC
 6 EMPLOYEES' RETIREMENT SYSTEM; REVISING CONTRIBUTIONS IN THE PUBLIC EMPLOYEES'
 7 RETIREMENT SYSTEM TO PROVIDE FOR AN ACTUARIALLY DETERMINED CONTRIBUTION; CHANGING
 8 THE DEFAULT RETIREMENT PLAN TO THE PUBLIC EMPLOYEES' DEFINED CONTRIBUTION PLAN;
 9 REVISING THE EMPLOYER CONTRIBUTION TO THE DEFINED CONTRIBUTION PLAN OF THE PUBLIC
 10 EMPLOYEES' RETIREMENT SYSTEM; PROVIDING DEFINITIONS; CREATING A PENSION SPECIAL
 11 TRUST FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 19-2-303,
 12 19-2-405, 19-2-409, 19-3-315, 19-3-316, 19-3-319, 19-3-1605, 19-3-2111, 19-3-2117, AND 19-21-214, MCA;
 13 AND PROVIDING AN EFFECTIVE DATE."

14
 15 WHEREAS, Montana's current statutory funding approach to Montana's Public Employees' Retirement
 16 System (PERS) and the current funding policies adopted by the Public Employees' Retirement Board is based
 17 on a 30-year maximum single-layer amortization period for unfunded liabilities; and

18 WHEREAS, contribution rates are currently fixed rates set in statute, which means legislation is
 19 required to increase contributions if the contribution rates are insufficient to keep the amortization period under
 20 30 years and continue to lower the amortization period each year; and

21 WHEREAS, a layered amortization funding policy and automatic adjustments in contribution rates to
 22 ensure contributions are sufficient to continue to pay down unfunded liabilities in a more expeditious and fiscally
 23 disciplined manner would significantly reduce the long-term costs of the Public Employees' Retirement System;
 24 and

25 WHEREAS, the Public Employees' Retirement System is the largest statewide public employee
 26 retirement system and accounts for the majority of the public retirement system liability, with an unfunded
 27 liability of \$2.25 billion and an amortization period of 32 years.

28

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

2

3

NEW SECTION. Section 1. Pension special trust fund -- transfer of funds -- statutory

4

appropriation. (1) There is an account in the state fiduciary fund established in 17-2-102(3) to be known as the pension special trust fund.

5

6

(2) By July 1, 2023, the state treasurer shall transfer \$300 million from the general fund to this account.

7

8

(3) The account is statutorily appropriated pursuant to 17-7-502 and may be used only to cover any difference between the actuarially determined employer contribution rate and the base rate defined in 19-3-316.

10

11

12

Section 2. Section 17-7-502, MCA, is amended to read:

13

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory

14

appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

15

16

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

17

18

(a) The law containing the statutory authority must be listed in subsection (3).

19

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

20

21

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-

22

11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-

23

807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218;

24

15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-

25

70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-

26

112; 19-3-319; 19-3-320; [\[section 1\]](#); 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-

27

305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-

28

26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-

1 402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213;
2 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115;
3 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-
4 13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006;
5 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-
6 102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

7 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
8 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
9 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
10 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined
11 by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have
12 statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the
13 inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement
14 system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410
15 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental
16 benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on
17 occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117
18 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30,
19 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025;
20 pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8,
21 Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec.
22 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017,
23 the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch. 50, L. 2019, the inclusion of 37-50-
24 209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates
25 June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June
26 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to
27 sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139,
28 L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion

of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

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

"19-2-303. 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 defined benefit plan, 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 mortality table and interest rate assumptions adopted by the board.

(5) "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.

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

(7) "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.

(8) "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

1 intervals.

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

5 (10) "Benefit" means:

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

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

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

12 (12) "Contingent annuitant" means:

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

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

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

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

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

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

25 (17) "Department" means the department of administration.

26 (18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the
27 benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits,
28 lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient,

1 including annuities derived from the benefits or payments.

2 (19) "Direct rollover" means a payment by the retirement plan to the eligible retirement plan
3 specified by the distributee or a payment from an eligible retirement plan to the retirement plan specified by the
4 distributee.

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

9 (21) "Distributee" means:

10 (a) a member;

11 (b) a member's surviving spouse;

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

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

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

18 (23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible
19 rollover distribution:

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

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

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

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

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

28 (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code,

1 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or
2 instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts
3 transferred into that plan from a plan under this title; or

4 (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code,
5 26 U.S.C. 408A.

6 (24) "Eligible rollover distribution":

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

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

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

15 (26) "Employer" means a governmental agency participating in a retirement system enumerated in
16 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as
17 responsible for paying retirement contributions pursuant to 7-11-105.

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

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

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

22 (c) the element is highly specialized.

23 (28) "Excess earnings" means the difference, if any, between reported compensation and the limits
24 provided in 19-2-1005(2) used to calculate a member's highest average compensation or final average
25 compensation.

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

28 (30) "Inactive member" means a member who terminates service and does not retire or take a

1 refund of the member's accumulated contributions.

2 (31) "Internal Revenue Code" has the meaning provided in 15-30-2101.

3 (32) "Member" means either:

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

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

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

10 (34) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost
11 method required to fund accruing benefits for members of a defined benefit retirement plan during any year in
12 the future.

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

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

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

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

21 ~~(38) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll~~
22 ~~covered by the defined contribution plan members that is allocated to the public employees' retirement system's~~
23 ~~defined benefit plan pursuant to 19-3-2117 to actuarially fund the unfunded liabilities and the normal cost rate~~
24 ~~changes in a defined benefit plan resulting from member selection of the defined contribution plan.~~

25 ~~(39)~~(38) "Regular contributions" means contributions required from members under a retirement plan.

26 ~~(40)~~(39) "Regular interest" means interest at rates set from time to time by the board.

27 ~~(41)~~(40) "Retirement" or "retired" means the status of a member who has:

28 (a) terminated from service; and

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

2 ~~(42)~~(41) "Retirement account" means an individual account within the defined contribution retirement
3 plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a
4 member of the defined contribution plan or the member's beneficiary.

5 ~~(43)~~(42) "Retirement benefit" means:

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

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

10 ~~(44)~~(43) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan
11 under one of the public employee retirement systems enumerated in 19-2-302.

12 ~~(45)~~(44) "Retirement system" or "system" means one of the public employee retirement systems
13 enumerated in 19-2-302.

14 ~~(46)~~(45) "Service" means employment of an employee in a position covered by a retirement system.

15 ~~(47)~~(46) "Service credit" means the periods of time for which the required contributions have been
16 made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a
17 defined benefit retirement plan.

18 ~~(48)~~(47) "Service retirement benefit" means the retirement benefit that the member may receive at
19 normal retirement age.

20 ~~(49)~~(48) "Statutory beneficiary" means the surviving spouse or dependent child or children of a
21 member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who
22 are statutorily designated to receive benefits upon the death of the member.

23 ~~(50)~~(49) "Supplemental cost" means an element of the total actuarial cost of a defined benefit
24 retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan
25 or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure
26 to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are
27 included in the unfunded actuarial liabilities of the retirement plan.

28 ~~(54)~~(50) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a

1 deceased member who died while in service under a defined benefit retirement plan.

2 ~~(52)~~(51) "Termination of employment", "termination from employment", "terminated employment",

3 "terminated from employment", "terminate employment", or "terminates employment" means that:

4 (a) there has been a complete severance of a covered employment relationship by the positive act
5 of either the employee, the employer, or both; and

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

8 ~~(53)~~(52) "Termination of service", "termination from service", "terminated from service", "terminated
9 service", "terminating service", or "terminates service" means that:

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

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

14 (c) the member is no longer receiving compensation for covered employment; and

15 (d) the member has been paid all compensation for compensatory leave, sick leave, or annual
16 leave to which the member was entitled. For the purposes of this subsection ~~(53)~~ (52), compensation does not
17 mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

18 ~~(54)~~(53) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit
19 retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that
20 same date.

21 ~~(55)~~(54) "Vested account" means an individual account within a defined contribution plan that is for the
22 exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the
23 income on all contributions in each of the following accounts:

24 (a) the member's contribution account;

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

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

27 ~~(56)~~(55) "Vested member" or "vested" means:

28 (a) with respect to a defined benefit plan, except as provided in subsection ~~(56)(b)~~ (55)(b), a

1 member or the status of a member who has at least 5 years of membership service;

2 (b) with respect to a member of the highway patrol officers' retirement system established in Title
3 19, chapter 6, who was hired on or after July 1, 2013, a member or the status of a member who has at least 10
4 years of membership service; or

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

7 ~~(57)~~(56) "Written application" or "written election" means a written instrument, prescribed by the board
8 or required by law, properly signed and filed with the board, that contains all required information, including
9 documentation that the board considers necessary.

10 ~~(58)~~(57) "Written instrument" includes an electronic record containing an electronic signature, as
11 defined in 30-18-102."
12

13 **Section 4.** Section 19-2-405, MCA, is amended to read:

14 **"19-2-405. Employment of actuary -- annual investigation and valuation.** (1) The board shall
15 retain a competent actuary who is an enrolled member of the American academy of actuaries and who is
16 familiar with public systems of pensions. The actuary is the technical adviser of the board on matters regarding
17 the operation of the retirement systems.

18 (2) The board shall require the actuary to make and report on an annual actuarial investigation into
19 the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and
20 liabilities of each defined benefit plan that is a part of the retirement systems.

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

25 (4) ~~(a)~~The unfunded liability contribution rate, which is entirely funded by a portion of the required
26 employer contributions to the retirement plan, must be calculated as the level percentage of current and future
27 defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan
28 over a reasonable period of time, not to exceed 30 years, as determined by the board, except as provided in

1 19-3-316 for the public employees' retirement system's defined benefit plan.

2 ~~(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement~~
3 ~~system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made~~
4 ~~to the defined benefit plan pursuant to 19-3-2117 and 19-21-214.~~

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

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

9 (7) The board shall provide copies of the reports required pursuant to subsections (2) and (5) to
10 the state administration and veterans' affairs interim committee and to the legislature pursuant to 5-11-210.

11 (8) The board shall require the actuary to prepare for each employer participating in a retirement
12 system the disclosures or the information required to be included in the disclosures as required by law and by
13 the governmental accounting standards board or its generally recognized successor."
14

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

16 **"19-2-409. Plans to be funded on actuarially sound basis -- definition.** As required by Article VIII,
17 section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For
18 purposes of this section, "actuarially sound basis" means that contributions to each retirement plan must be
19 sufficient to pay the full actuarial cost of the plan. For a defined benefit plan, the full actuarial cost includes both
20 the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities
21 over a scheduled period of no more than 30 years, except that with respect to the public employees' retirement
22 system's defined benefit plan, the unfunded liabilities must be paid over the periods provided for in 19-3-316.
23 For the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an
24 account on behalf of the member."
25

26 **Section 6.** Section 19-3-315, MCA, is amended to read:

27 **"19-3-315. Member's contribution to be deducted.** (1) ~~(a)~~ Except as provided in subsection (2),
28 each member's contribution is 7.9% of the member's compensation.

1 ~~(b) The board shall annually review the required contributions and recommend future adjustments to~~
2 ~~the legislature as needed to maintain the amortization schedule set by the board for the payment of the~~
3 ~~system's unfunded liability.~~

4 (2) Each member's contribution must be reduced to 6.9% on January 1 following the ~~system's~~
5 defined benefit plan's annual actuarial valuation if the valuation determines that the plan's funded ratio is at
6 least 100% and reducing the employee contribution pursuant to this subsection and ~~reducing the employer~~
7 ~~contribution pursuant to 19-3-316(4) terminating the employer supplemental contribution pursuant to 19-3-~~
8 ~~319(3) would not cause the system's amortization period to exceed 25 years~~ the plan's funded ratio to be less
9 than 100%.

10 (3) Payment of salaries or wages less the contribution is full and complete discharge and
11 acquittance of all claims and demands for the service rendered by members during the period covered by the
12 payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

13 (4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, 26 U.S.C.
14 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) or
15 (2) for service rendered after June 30, 1985.

16 (5) (a) The member's contributions picked up by the employer must be designated for all purposes
17 of the retirement system as the member's contributions, except for the determination of a tax upon a distribution
18 from the retirement system.

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

22 (c) In the case of a member of the defined contribution plan, these contributions must be allocated
23 as provided in 19-3-2117.

24 (6) The member's contributions picked up by the employer must be payable from the same source
25 as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-
26 1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the
27 amount of the member's contributions picked up by the employer and remit the total of the contributions to the
28 board."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Section 7. Section 19-3-316, MCA, is amended to read:

"19-3-316. Employer contribution rates -- definitions. ~~(1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees 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 rates under 19-3-319.~~

~~(3) (a) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the percentage specified in subsection (3)(b) of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership.~~

~~(b) The percentage of compensation to be contributed under subsection (3)(a) is 1.27% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (3)(a) is 2.27%.~~

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

~~(b) The employer contribution required under subsection (3) terminates on January 1 following the board's receipt of the system's actuarial valuation if the actuarial valuation determines that terminating the additional employer contribution pursuant to this subsection (4)(b) and reducing the employee contribution pursuant to 19-3-315 (2) would not cause the amortization period to exceed 25 years~~ (1) Beginning July 1, 2023, through June 30, 2024, each employer shall contribute an amount equal to 9.29% of the compensation of all the employer's employees in the defined benefit plan and the defined contribution plan, except for 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

1 provided in 19-3-112. Of employer contributions made for members of the defined contribution plan, 7.9% must
2 go to the defined contribution plan, and the remaining amount must go to the defined benefit plan's legacy
3 unfunded liability.

4 (2) (a) Beginning July 1, 2024, each employer shall contribute to the defined benefit plan either the
5 actuarially determined employer contribution that is determined annually by the public employees' retirement
6 system's actuary in accordance with the provisions of this section and part of the plan's annual actuarial
7 valuation or the base rate of 9.79%, whichever is less. This actuarially determined employer contribution rate is
8 effective July 1 following the annual actuarial valuation completed in the prior calendar year. Beginning July 1,
9 2025, the base rate will increase by 0.50% each year.

10 (b) Beginning July 1, 2024, each employer shall contribute either the actuarially determined
11 employer contribution or the base rate of 9.79% for employees in the defined contribution plan, whichever is
12 less. Of the total amount, 7.9% must go to the defined contribution plan, and the remaining amount must go to
13 the defined benefit plan's legacy unfunded liability. Beginning July 1, 2025, the base rate will increase by 0.50%
14 each year.

15 (c) If the actuarially determined employer contribution is higher than the base rate, the pension
16 special trust fund established in [section 1] must be used to fund the difference so long as there is an available
17 balance in the fund.

18 (e)(d) The actuarially determined employer contribution must be the sum of the following contribution
19 rates, minus the employee contribution provided in 19-3-315 and the state contributions provided in 19-3-319
20 and 19-3-320:

21 (i) the contribution rate determined under subsection ~~(2)(d)~~(2)(e) to pay off the legacy unfunded
22 liability;

23 (ii) the contribution rate determined under subsection ~~(2)(e)~~(2)(f) to pay for the contemporary
24 unfunded liability;

25 (iii) the contribution rate determined under subsection ~~(2)(f)~~(2)(g) to pay for the normal cost of
26 benefits as they accrue; and

27 (iv) a contribution of 0.04% of compensation for the employer's employees who are members of
28 either the defined contribution plan or the defined benefit plan for educational programs as provided in 19-3-

1 112.

2 ~~(d)(e)~~ (i) The contribution rate under subsection ~~(2)(e)(i)(2)(d)(i)~~ for the legacy unfunded liability must
3 be the amount required on a level dollar basis to amortize the legacy unfunded liability attributable to the
4 employer's employees who are members of either the defined contribution plan or the defined benefit plan over
5 a closed 30-year amortization period beginning July 1, 2023, except as provided in subsection ~~(2)(e)(ii)~~
6 ~~(2)(d)(ii).~~

7 (ii) If the June 30, 2023, actuarial valuation determines the system's amortization period is less
8 than 30 years, then the closed amortization period used for the purposes of subsection ~~(2)(e)(i)(2)(d)(i)~~ must be
9 that amortization period.

10 ~~(e)(f)~~ The contribution rate under subsection ~~(2)(e)(ii)(2)(d)(ii)~~ for the contemporary unfunded liability
11 must be the amount required on a level dollar basis to pay the annual contemporary unfunded liabilities
12 attributable to the employer's employees who are members of either the defined contribution plan or the defined
13 benefit plan over a layered amortization schedule so that each fiscal year's contemporary unfunded liability is
14 amortized over a closed 10-year period, starting with the contemporary unfunded liability for the fiscal year
15 ending June 30, 2024.

16 ~~(f)(g)~~ The contribution rate under subsection ~~(2)(e)(iii)(2)(d)(iii)~~ for the normal cost of benefits as they
17 accrue must be the amount required on a level dollar basis to pay the normal cost of benefits as determined in
18 the annual actuarial valuation as the benefits accrue for each of the employer's employees who are members of
19 either the defined contribution plan or the defined benefit plan.

20 (3) (a) Beginning July 1, 2023, each employer shall contribute to the defined contribution plan an
21 amount equal to 7.9%. Of employer contributions made under this subsection (3)(a) for defined contribution
22 plan members, a portion must be allocated for educational programs as provided in 19-3-112.

23 (b) The employer contribution under subsection (3)(a) must be allocated as provided in 19-3-2117.

24 (c) The employer contribution rate for the defined contribution plan may not be lower than 7.9%,
25 even if the actuarially determined contribution rate for the defined benefit plan is less than 7.9%.

26 (4) For the purposes of this section, the following definitions apply:

27 (a) "Contemporary unfunded liability" means the defined benefit plan's annual fiscal year actuarial
28 gains and losses smoothed over 5 years starting with the fiscal year ending June 30, 2019.

1 (b) "Legacy unfunded liability" means the unfunded liability of the defined benefit plan as of June
2 30, 2023."

3

4 **Section 8.** Section 19-3-319, MCA, is amended to read:

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

9 (2) ~~(a) Subject to subsection (2)(b)~~ Subject to subsection (3), in addition to the contribution
10 required under subsection (1), the state shall contribute monthly from the general fund to the pension trust fund
11 a sum equal to 0.27% of the compensation paid to all employees of school districts except for those employees
12 properly excluded from membership.

13 ~~(b)(3)~~ The additional contribution under subsection (2)(a) terminates when the additional contribution
14 under 19-3-316 (3) terminates contributions in this section terminate January 1 following the defined benefit
15 plan's annual actuarial valuation if the valuation determines that the plan's funded ratio is at least 100% and
16 terminating the contribution pursuant to this subsection and reducing the employee contribution pursuant to 19-
17 3-315(2) would not cause the funded ratio to be less than 100%.

18 ~~(3)(4)~~ The board shall certify amounts due under this section on a monthly basis, and the state
19 treasurer shall transfer those amounts to the pension trust fund within 1 week. The payments in this section are
20 statutorily appropriated as provided in 17-7-502."

21

22 **Section 9.** Section 19-3-1605, MCA, is amended to read:

23 **"19-3-1605. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of
24 each year, the permanent monthly benefit payable during the preceding January to each recipient who is
25 eligible under subsection (3) must be increased by the applicable percentage provided in subsection (4).

26 (2) (a) If a recipient's benefit payable during the preceding January has been increased by one or
27 more adjustments not provided for in this section and the adjustments amount to less than an annualized
28 increase of the applicable percentage provided in subsection (4), then the recipient's benefit must be adjusted

1 by an amount that will provide a total annualized increase of the applicable percentage in the benefit paid since
2 the preceding January.

3 (b) If a recipient's benefit payable during the preceding January has been increased by one or
4 more adjustments not provided for in this section and the increases amount to more than an annualized
5 increase of the applicable percentage provided in subsection (4), then the benefit increase provided under this
6 section must be 0%.

7 (c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of
8 the original payee that occurred since the preceding January, the new recipient's monthly benefit must be
9 increased to the applicable percentage provided in subsection (4)(b) more than the amount that the contingent
10 annuitant would have received had the contingent annuitant received a benefit during the preceding January.

11 (3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the
12 minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least
13 12 months prior to January 1 of the year in which the adjustment is to be made.

14 (4) (a) The applicable percentage increase under subsection (1) is 3% if the member was hired or
15 assumed office:

16 (i) before July 1, 2007; or

17 (ii) on or after July 1, 2007, and before July 1, 2013, and the benefit recipient is a member of a
18 retirement system provided for in this title, and the guaranteed annual benefit adjustment provision for that
19 member under that system is a 3% benefit increase.

20 (b) The applicable percentage increase under subsection (1) is 1.5% if the member was hired or
21 assumed office on or after July 1, 2007, and before June 30, 2013, and the benefit recipient is not otherwise
22 covered under subsection (4)(a)(ii).

23 (c) The applicable percentage increase under subsection (1) is 1.5% if the member was hired or
24 assumed office on or after July 1, 2013, subject to reduction as provided in subsection (5).

25 (5) (a) ~~Except as provided in subsection (5)(b), if~~ If the most recent actuarial valuation of the
26 retirement system shows that retirement system liabilities are less than 90% funded, the applicable percentage
27 increase in subsection (4)(c) must be reduced by 0.1% for each 2% below that 90% funding level.

28 (b) ~~If the amortization period is 40 years or greater, the applicable percentage increase in subsection~~

1 ~~(4)(c) must be reduced to 0% and the retirement allowance may not be increased.~~

2 (6) The board shall adopt rules to administer the provisions of this section."

3

4 **Section 10.** Section 19-3-2111, MCA, is amended to read:

5 **"19-3-2111. Plan membership -- written election required -- failure to elect -- effect of election.**

6 (1) Except as otherwise provided in this part:

7 (a) a member who was an inactive member of the defined benefit plan on the effective date of the
8 defined contribution plan and who is rehired into covered employment after the plan effective date may, within
9 the 12-month period provided for in subsection (2)(a), elect to transfer to and become a member of the plan
10 regardless of whether the member remains active, becomes inactive, or terminates employment and plan
11 membership within the 12-month period;

12 (b) a member who is initially hired into covered employment on or after the effective date of the
13 defined contribution plan may, within the 12-month period provided for in subsection (2)(a), elect to become a
14 member of the plan regardless of whether the member remains active, becomes inactive, or terminates
15 employment and plan membership within the 12-month period.

16 (2) (a) Elections made pursuant to this section must be made on a form prescribed by the board
17 and must be made within 12 months from the month that the employer properly reports the new or rehired
18 member to the board.

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

21 (c) An election under this section, including the default election pursuant to subsection (2)(b), is a
22 one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after
23 a member has terminated membership in either plan and returned to covered employment.

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

27 (4) A system member may not simultaneously be a member of the defined benefit plan and the
28 defined contribution plan and must be a member of either the defined benefit plan or the defined contribution

1 plan. A period of service may not be credited in more than one retirement plan within the system.

2 (5) The provisions of this part do not prohibit the board from adopting rules to allow an employee
3 to elect the defined contribution plan from the first day of covered employment.

4 (6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907
5 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution
6 plan unless the order is modified to apply under the defined contribution plan.

7 (7) (a) A member of the defined benefit plan who is purchasing service credit through installment
8 payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer
9 membership to the defined contribution plan unless the member first completes or terminates the contract for
10 purchase of service credit.

11 (b) A member who files an election to transfer membership may make a lump-sum payment for up
12 to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of
13 section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-
14 708, must be made with after-tax dollars.

15 (c) If a member who files an election to transfer membership fails to complete or terminate the
16 contract for purchase of service credit by the end of the member's 12-month election window, the board shall
17 terminate the service purchase contract and credit the member with the prorated amount of service credit
18 purchased under the contract."

19
20 **Section 11.** Section 19-3-2117, MCA, is amended to read:

21 **"19-3-2117. Allocation of contributions and forfeitures.** (1) The member contributions made under
22 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the
23 plan member's retirement account.

24 (2) ~~Subject to subsections (3) and (4), of the employer contributions under 19-3-316 received: The~~
25 employer's contribution received under 19-3-316(2) must be allocated as follows:

26 ~~(a) an amount equal to:~~

27 ~~(i)(a) 4.19% the percentage of compensation specified under 19-3-316(3)(a) minus the amounts~~
28 specified in subsections (2)(b) and (2)(c) of this section must be allocated to the member's retirement account;

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

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

3 and

4 ~~(iv)(c) 0.3% of compensation must be allocated to the long-term disability plan trust fund established~~

5 ~~pursuant to 19-3-2141;~~

6 ~~(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-~~

7 ~~316(4)(b), the percentage specified in subsection (3) of this section of compensation must be allocated to the~~

8 ~~defined benefit plan to eliminate the plan choice rate unfunded actuarial liability;~~

9 ~~(c) on July 1, 2013, and continuing until June 30, 2015, an amount equal to 1% of compensation must~~

10 ~~be allocated to the defined benefit plan unfunded liabilities; and~~

11 ~~(d) on July 1, 2015, and continuing until the plan choice rate unfunded actuarial liability in the defined~~

12 ~~benefit plan is fully paid, an amount equal to 1% of compensation must be allocated to the defined benefit plan~~

13 ~~as part of the plan choice rate. Effective the first full pay period in the month following the board's verification~~

14 ~~that the plan choice rate unfunded actuarial liability is paid off, the amount equal to 1% of compensation must~~

15 ~~be allocated to the member's retirement account until the additional employer contributions terminate pursuant~~

16 ~~to 19-3-316(4)(b).~~

17 ~~(3) The percentage of compensation to be contributed under subsection (2)(b) is 0.27% for fiscal year~~

18 ~~2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30,~~

19 ~~2024, the percentage of compensation to be contributed under subsection (2)(b) is 1.27%.~~

20 ~~(4) Effective the first full pay period in the month following the board's verification that the plan choice~~

21 ~~rate unfunded actuarial liability is paid off, the 2.37% of compensation in subsection (2)(a)(ii) and the~~

22 ~~percentage of compensation in subsection (3), if any, must be allocated to the member's retirement account.~~

23 ~~(5)(3) Forfeitures of employer contributions and investment income on the employer contributions~~

24 ~~may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-~~

25 ~~3-2116 to meet the plan's administrative expenses, including startup expenses."~~

27 **Section 12.** Section 19-21-214, MCA, is amended to read:

28 **"19-21-214. Contributions and allocations for employees in positions covered under public**

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

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

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

5 (2) ~~Subject to subsections (3) and (4), of the~~ The employer's contribution received under 19-3-
6 316(3):

7 (a) ~~an amount equal to:~~ must be allocated as follows:

8 (i)(a) ~~4.49% the percentage of compensation specified under 19-3-316(3)(a) minus the amount~~
9 specified in subsection (2)(b) of this section must be allocated to the participant's program account;

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

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

13 (b) ~~on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-~~
14 ~~316(4)(b), an amount equal to 0.27% of compensation must be allocated to the defined benefit plan to eliminate~~
15 ~~the plan choice rate unfunded actuarial liability;~~

16 (c) ~~on July 1, 2013, and continuing until June 30, 2015, an amount equal to 1% of compensation must~~
17 ~~be allocated to the defined benefit plan unfunded liabilities; and~~

18 (d) ~~on July 1, 2015, and continuing until the plan choice rate unfunded actuarial liability in the defined~~
19 ~~benefit plan is fully paid, an amount equal to 1% of compensation must be allocated to the defined benefit plan~~
20 ~~as part of the plan choice rate. Effective the first full pay period in the month following the board's verification~~
21 ~~that the plan choice rate unfunded actuarial liability is paid off, the amount equal to 1% of compensation must~~
22 ~~be allocated to the member's retirement account until the additional employer contributions terminate pursuant~~
23 ~~to 19-3-316(4)(b).~~

24 (3) ~~The percentage of compensation amount to be allocated under subsection (2)(b) must be~~
25 ~~increased by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the~~
26 ~~percentage of compensation amount to be allocated under subsection (2)(b) must be 1.27%.~~

27 (4) ~~Effective the first full pay period in the month following the board's verification that the plan choice~~
28 ~~rate unfunded actuarial liability is paid off, amounts equal to the 2.37% of compensation in subsection (2)(a)(ii)~~

Amendment - 1st Reading-white - Requested by: Terry Moore - (H) State Administration

- 2023

68th Legislature 2023

Drafter: Rebecca Power,

HB0226.001.001

1 and the percentage of compensation in subsection (2)(b), if any, must be allocated to the member's retirement
2 account."

3

4

5 **NEW SECTION. Section 13. Codification instruction.** [Section 1] is intended to be codified as an
6 integral part of Title 19, chapter 3, part 3, and the provisions of Title 19, chapter 3, part 3, apply to [section 1].

7

8 **NEW SECTION. Section 14. Effective date.** [This act] is effective July 1, 2023.

9

- END -

AMENDED