HOUSE BILL NO. 226

INTRODUCED BY T. MOORE, J. HAMILTON, D. FERN, S. VINTON, B. MERCER, T. MCGILLVRAY, D. LENZ, T. FALK, J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REVISING CONTRIBUTIONS IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PROVIDE FOR AN ACTUARIALLY DETERMINED CONTRIBUTION; CHANGING THE DEFAULT RETIREMENT PLAN TO THE PUBLIC EMPLOYEES' DEFINED CONTRIBUTION PLAN; REVISING THE EMPLOYER CONTRIBUTION TO THE DEFINED CONTRIBUTION PLAN OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; PROVIDING DEFINITIONS; CREATING A PENSION SPECIAL TRUST FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 19-2-303, 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; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

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

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

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

(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.

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

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

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

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

(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.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 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; 10-2-807; 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; 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; 15-70-130; 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; 18-11-112; 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; 19-19-305; 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; 20-26-1503; 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-

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; 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; 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; 76-13-150; 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; 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; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

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

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

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

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

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

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

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

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

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

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

112.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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