

**Amendment - 1st Reading/2nd House-blue - Requested by: Terry Moore - (S) Finance and Claims**

- 2023

68th Legislature 2023

Drafter: Rebecca Power,

HB0226.002.008

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 ~~REQUIRING MEMBERS TO ELECT EITHER THE DEFINED BENEFIT PLAN OR THE DEFINED~~  
10 ~~CONTRIBUTION PLAN ON THEIR FIRST DAY OF EMPLOYMENT; ALLOWING MEMBERS TO CHANGE~~  
11 ~~THEIR PLAN CHOICE IN THE FIRST 12 MONTHS OF SERVICE;~~ REVISING THE EMPLOYER  
12 CONTRIBUTION TO THE DEFINED CONTRIBUTION PLAN OF THE PUBLIC EMPLOYEES' RETIREMENT  
13 SYSTEM; PROVIDING DEFINITIONS; CREATING A PENSION SPECIAL TRUST FUND; PROVIDING A  
14 STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 19-2-303, 19-2-405, 19-2-409, 19-3-315,  
15 19-3-316, 19-3-319, 19-3-401, 19-3-1605, 19-3-2111, 19-3-2117, AND 19-21-214, MCA; AND PROVIDING AN  
16 EFFECTIVE DATE."  
17

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

21 WHEREAS, contribution rates are currently fixed rates set in statute, which means legislation is  
22 required to increase contributions if the contribution rates are insufficient to keep the amortization period under  
23 30 years and continue to lower the amortization period each year; and

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

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

4 ~~(b)(3)~~ The additional contribution under subsection ~~(2)(a)~~ terminates when the additional contribution  
5 under ~~19-3-316 (3)~~ terminates contributions in this section terminate January 1 following the defined benefit  
6 plan's annual actuarial valuation if the valuation determines that the plan's funded ratio is at least 100% and  
7 terminating the contribution pursuant to this subsection and reducing the employee contribution pursuant to 19-  
8 3-315(2) would not cause the funded ratio to be less than 100%.

9 ~~(3)(4)~~ The board shall certify amounts due under this section on a monthly basis, and the state  
10 treasurer shall transfer those amounts to the pension trust fund within 1 week. The payments in this section are  
11 statutorily appropriated as provided in 17-7-502."

12

13 **Section 9.** Section 19-3-401, MCA, is amended to read:

14 **"19-3-401. Membership -- inactive vested members -- inactive nonvested members.** (1) Except  
15 as otherwise provided in this chapter, all employees ~~become members of the defined benefit plan~~ shall elect to  
16 join either the defined benefit plan or the defined contribution plan on the first day of service. Each employer  
17 shall file with the board information affecting the employer's employees' status as members as the board may  
18 require. ~~An employee may become a member of the defined contribution plan only as provided in Title 19,~~  
19 ~~chapter 3, part 21. An employee may choose to switch plans within the first 12 months of employment.~~

20 (2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service  
21 is an inactive vested member and retains the right to purchase service credit and to receive a service retirement  
22 benefit subject to the provisions of this chapter.

23 (b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment  
24 rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated  
25 contributions and not the employer's contributions.

26 (3) (a) An inactive member of the defined benefit plan with less than 5 years of membership  
27 service is an inactive nonvested member and is not eligible for any benefits from the retirement plan.

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- 1 (b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the  
2 member's accumulated contributions.
- 3 (4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the  
4 defined contribution plan is an active member of the system and is not eligible for a refund of contributions or  
5 for benefit payments if the member either:
- 6 (a) returns to service within 30 days of termination of employment; or  
7 (b) terminates one employment but remains employed in another position covered by the system.
- 8 (5) Time during which an employee of a school district, the Montana school for the deaf and blind,  
9 or a public institution of higher education is absent from service during official vacation is counted as  
10 membership service in determining eligibility for retirement benefits."  
11

12 **Section 10.** Section 19-3-1605, MCA, is amended to read:

13 **"19-3-1605. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of  
14 each year, the permanent monthly benefit payable during the preceding January to each recipient who is  
15 eligible under subsection (3) must be increased by the applicable percentage provided in subsection (4).

16 (2) (a) If a recipient's benefit payable during the preceding January has been increased by one or  
17 more adjustments not provided for in this section and the adjustments amount to less than an annualized  
18 increase of the applicable percentage provided in subsection (4), then the recipient's benefit must be adjusted  
19 by an amount that will provide a total annualized increase of the applicable percentage in the benefit paid since  
20 the preceding January.

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

25 (c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of  
26 the original payee that occurred since the preceding January, the new recipient's monthly benefit must be  
27 increased to the applicable percentage provided in subsection (4)(b) more than the amount that the contingent

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1 annuitant would have received had the contingent annuitant received a benefit during the preceding January.

2 (3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the  
3 minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least  
4 12 months prior to January 1 of the year in which the adjustment is to be made.

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

7 (i) before July 1, 2007; or

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

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

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

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

19 ~~(b) If the amortization period is 40 years or greater, the applicable percentage increase in subsection~~  
20 ~~(4)(c) must be reduced to 0% and the retirement allowance may not be increased.~~

21 (6) The board shall adopt rules to administer the provisions of this section."  
22

23 **Section 11.** Section 19-3-2111, MCA, is amended to read:

24 **"19-3-2111. Plan membership -- written election required -- failure to elect -- effect of election.**

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

26 (a) a member who was an inactive member of the defined benefit plan on the effective date of the  
27 defined contribution plan and who is rehired into covered employment after the plan effective date may, within

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1 the 12-month period provided for in subsection (2)(a), elect to transfer to and become a member of the plan  
2 regardless of whether the member remains active, becomes inactive, or terminates employment and plan  
3 membership within the 12-month period;

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

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

11 (b) A member failing to make an election prescribed by this section remains a member of the  
12 ~~defined benefit contribution~~ plan they elected on their first day of service.

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

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

19 (4) A system member may not simultaneously be a member of the defined benefit plan and the  
20 defined contribution plan and must be a member of either the defined benefit plan or the defined contribution  
21 plan. A period of service may not be credited in more than one retirement plan within the system.

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

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

27 (7) (a) A member of the defined benefit plan who is purchasing service credit through installment

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1 payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer  
2 membership to the defined contribution plan unless the member first completes or terminates the contract for  
3 purchase of service credit.

4 (b) A member who files an election to transfer membership may make a lump-sum payment for up  
5 to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of  
6 section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-  
7 708, must be made with after-tax dollars.

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

13 **Section 12.** Section 19-3-2117, MCA, is amended to read:

14 **"19-3-2117. Allocation of contributions and forfeitures.** (1) The member contributions made under  
15 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the  
16 plan member's retirement account.

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

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

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

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

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

24 and

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

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