

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

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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."

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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

28 WHEREAS, the Public Employees' Retirement System is the largest statewide public employee

1 retirement system and accounts for the majority of the public retirement system liability, with an unfunded  
2 liability of \$2.25 billion and an amortization period of 32 years.

3

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

5

6 NEW SECTION. SECTION 1. PENSION SPECIAL ~~TRUST~~ FUND -- TRANSFER OF FUNDS -- STATUTORY

7 APPROPRIATION. (1) THERE IS ~~AN ACCOUNT IN THE STATE FIDUCIARY FUND ESTABLISHED IN 17-2-102(3)~~ established in  
8 the state special revenue fund an account TO BE KNOWN AS THE PENSION SPECIAL ~~TRUST~~ FUND to pay the  
9 difference between the actuarially determined contribution rate and the base rate pursuant to 19-3-316.

10 (2) BY JULY 1, 2023, THE STATE TREASURER SHALL TRANSFER \$300 MILLION FROM THE GENERAL FUND  
11 TO THIS ACCOUNT.

12 (3) THE ACCOUNT IS STATUTORILY APPROPRIATED PURSUANT TO 17-7-502 AND MAY BE USED ONLY TO  
13 COVER ANY DIFFERENCE BETWEEN THE ACTUARIALLY DETERMINED EMPLOYER CONTRIBUTION RATE AND THE BASE RATE  
14 ~~DEFINED IN~~ pursuant to 19-3-316.

15 (4) The account established in subsection (1) retains interest earned from the investment of money  
16 in the account.

17 (5) The pension special fund must be closed on June 30, 2033, and any remaining funds must  
18 revert to the general fund.

19

20 SECTION 2. SECTION 17-7-502, MCA, IS AMENDED TO READ:

21 "17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory  
22 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without  
23 the need for a biennial legislative appropriation or budget amendment.

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

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

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

1 accumulated.

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

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

9

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

11 **"19-3-316. Employer contribution rates -- definitions.** (1) ~~Each employer shall contribute to the~~  
12 ~~system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the~~  
13 ~~compensation paid to all of the employer's employees plus any additional contribution under subsection (3),~~  
14 ~~except for those employees properly excluded from membership. Of employer contributions made under this~~  
15 ~~subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for~~  
16 ~~educational programs as provided in 19-3-112. Employer contributions for members under the defined~~  
17 ~~contribution plan must be allocated as provided in 19-3-2117.~~

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

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

23 ~~(b) The percentage of compensation to be contributed under subsection (3)(a) is 1.27% for fiscal year~~  
24 ~~2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30,~~  
25 ~~2024, the percentage of compensation to be contributed under subsection (3)(a) is 2.27%.~~

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

1           ~~(b) The employer contribution required under subsection (3) terminates on January 1 following the~~  
2 ~~board's receipt of the system's actuarial valuation if the actuarial valuation determines that terminating the~~  
3 ~~additional employer contribution pursuant to this subsection (4)(b) and reducing the employee contribution~~  
4 ~~pursuant to 19-3-315 (2) would not cause the amortization period to exceed 25 years (1) Beginning July 1,~~  
5 ~~2023, through June 30, 2024, each employer shall contribute an amount equal to 9.29% of the compensation of~~  
6 ~~all the employer's employees in the defined benefit plan and the defined contribution plan, except for those~~  
7 ~~properly excluded from membership. Of employer contributions made under this subsection for both defined~~  
8 ~~benefit plan and defined contribution plan members, a portion must be allocated for educational programs as~~  
9 ~~provided in 19-3-112. Of employer contributions made for members of the defined contribution plan, 7.9% must~~  
10 ~~go to the defined contribution plan, and the remaining amount must go to the defined benefit plan's legacy~~  
11 ~~unfunded liability.~~

12           (2) (a) Beginning July 1, 2024, each employer shall contribute to the defined benefit plan EITHER  
13 the actuarially determined employer contribution that is determined annually by the public employees'  
14 retirement system's actuary in accordance with the provisions of this section and part of the plan's annual  
15 actuarial valuation OR THE BASE RATE OF 9.79%, WHICHEVER IS LESS. This actuarially determined employer  
16 contribution RATE is effective July 1 following the annual actuarial valuation completed in the prior calendar  
17 year. BEGINNING JULY 1, 2025, THE BASE RATE WILL INCREASE BY 0.50% EACH YEAR. The maximum employer  
18 contribution rate is 13%.

19           (b) Beginning July 1, 2024, each employer shall contribute EITHER the actuarially determined  
20 employer contribution OR THE BASE RATE OF 9.79% for employees in the defined contribution plan, WHICHEVER IS  
21 LESS. Of the total amount, 7.9% must go to the defined contribution plan, and the remaining amount must go to  
22 the defined benefit plan's legacy unfunded liability. BEGINNING JULY 1, 2025, THE BASE RATE WILL INCREASE BY  
23 0.50% EACH YEAR. The maximum employer contribution rate is 13%.

24           (c) IF THE ACTUARIALLY DETERMINED EMPLOYER CONTRIBUTION IS HIGHER THAN THE BASE RATE, THE  
25 PENSION SPECIAL TRUST FUND ESTABLISHED IN [SECTION 1] MUST BE USED TO FUND THE DIFFERENCE SO LONG AS  
26 THERE IS AN AVAILABLE BALANCE IN THE FUND.

27           ~~(e)(D)~~ The actuarially determined employer contribution must be the sum of the following contribution  
28 rates, minus the employee contribution provided in 19-3-315 and the state contributions provided in 19-3-319

1 and 19-3-320:

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

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

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

8 (iv) a contribution of 0.04% of compensation for the employer's employees who are members of  
9 either the defined contribution plan or the defined benefit plan for educational programs as provided in 19-3-  
10 112.

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

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

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

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

28 (3) (a) Beginning July 1, 2023, each employer shall contribute to the defined contribution plan an

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

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

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

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

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

9 (b) "Legacy unfunded liability" means the unfunded liability of the defined benefit plan as of June  
10 30, 2023."

11

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

13 **"19-3-319. State contributions for local government and school district employers. (1)The (1)**

14 Subject to subsection (3), the state shall contribute monthly from the general fund to the pension trust fund a  
15 sum equal to 0.1% of the compensation paid to all employees of local government entities and school districts  
16 on and after July 1, 1997, except those employees properly excluded from membership.

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

21 (b)(3) The additional contribution under subsection (2)(a) terminates when the additional contribution  
22 under 19-3-316 (3) terminates contributions in this section terminate January 1 following the defined benefit  
23 plan's annual actuarial valuation if the valuation determines that the plan's funded ratio is at least 100% and  
24 terminating the contribution pursuant to this subsection and reducing the employee contribution pursuant to 19-  
25 3-315(2) would not cause the funded ratio to be less than 100%.

26 (3)(4) The board shall certify amounts due under this section on a monthly basis, and the state  
27 treasurer shall transfer those amounts to the pension trust fund within 1 week. The payments in this section are  
28 statutorily appropriated as provided in 17-7-502."

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

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

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

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

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

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.

(4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

(a) returns to service within 30 days of termination of employment; or

(b) terminates one employment but remains employed in another position covered by the system.

(5) Time during which an employee of a school district, the Montana school for the deaf and blind, or a public institution of higher education is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits."

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

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

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

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

8 (6) The board shall adopt rules to administer the provisions of this section."  
9

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

11 **"19-3-2111. Plan membership -- written election required -- failure to elect -- effect of election.**

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

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

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

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

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

27 (c) An election under this section, including the default election pursuant to subsection (2)(b), is a  
28 one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after



1 a member has terminated membership in either plan and returned to covered employment.

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

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

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

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

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

17 (b) A member who files an election to transfer membership may make a lump-sum payment for up  
18 to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of  
19 section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-  
20 708, must be made with after-tax dollars.

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

25

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

27 **"19-3-2117. Allocation of contributions and forfeitures.** (1) The member contributions made under  
28 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the