

**MEMORANDUM**

**Via Electronic Mail**

**TO:** Dore Schwinden, Executive Director  
Melanie Symons, Chief Legal Counsel  
Montana Public Employee Retirement Administration

**FROM:** Mary Beth Braitman, Terry A.M. Mumford and Tiffany A. Sharpley  
Ice Miller LLP *MBB TAMM TS*

**CC:** Kate Talley, Legal Counsel  
Montana Public Employee Retirement Administration

**DATE:** August 11, 2014

**RE:** Proposed Bill To Adjust Retirement Plan Contributions

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We understand that the proposed legislation you provided to us in your correspondence dated July 14, 2014 ("Bill") will be discussed at an upcoming meeting of the State Administration and Veterans' Affairs ("SAVA") Interim Committee on August 15, 2014. This memorandum responds to your request that we review the Bill and analyze whether there are federal qualification concerns with respect to the State of Montana Public Employees' Retirement System Defined Contribution Plan ("MPERS DC"). We have also made comments, where relevant, regarding the State of Montana Public Employees' Retirement System Defined Benefit Plan ("MPERS DB") and fiduciary concerns.

We prepared our analysis based upon our understanding of the current version of the Bill. The attached chart details our understanding. (If our understanding of the Bill is incorrect, that could affect our analysis.)

Fundamentally, we believe this Bill is intended to accomplish the following:

- (a) to preserve and improve the funded status of the MPERS DB plan;
- (b) to keep contribution levels consistent between the MPERS DB and MPERS DC plans;
- (c) to provide an adjustable contribution for both members and employers in the MPERS DB and MPERS DC plans, where the adjustment depends on the funded status of the MPERS DB plan.

**ANALYSIS WITH REGARD TO THE INTERNAL REVENUE CODE AND  
DEFINITELY DETERMINABLE BENEFITS**

The Internal Revenue Code ("Code") dictates that for a retirement plan to be a qualified retirement plan under Code §401(a) there are certain requirements that must be met. (Some of those requirements under Code §401(a) are eliminated or modified for governmental plans.) The Code requirement to have definitely determinable benefits applies to governmental defined benefit plans and to certain governmental defined contribution plans. "Money purchase" defined contribution plans must have definitely determinable contributions, as opposed to "profit sharing" plans, which must have a definite predetermined formula for allocating contributions.

The Treasury Regulations define a pension plan as "a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement." Treas. Reg. §1.401-1(b)(1)(i). There are a number of standards that the Internal Revenue Service ("IRS") has provided for guidance in determining what defines or makes a definitely determinable benefit.

Our concern with regards to the determination of whether a benefit is definitely determinable is not with the MPERS DB, but instead with the Bill's provisions that affect contributions to the MPERS DC. The MPERS DB benefits remain the same regardless of the amount of the adjustable employer or member contribution or where the employer contribution is deposited. The fixed benefit formula in MPERS DB eliminates definite determinable issues on the DB side. However, the MPERS DC is a money purchase plan under the Code. See 19-3-2102(1), MCA. This means that employer and employee contributions to the MPERS DC plan must be made to members' accounts based on a specific contribution formula.

Sections 1 and 2 of the Bill provide for a 1% adjustable contribution rate ("ACR") for both member and employer contribution rates. These adjustments are based upon several conditions. The adjustment may be up or down and may be between 0 and 1%. The employee contribution to the MPERS DB and MPERS DC plans are the same, so that changes in the ACR could result in a change in the employee contribution to the MPERS DC plan. Additionally, the employer contribution rate to the MPERS DC plan will be affected by the adjustment. Both these changes (employee contribution rate and employer contribution rate) will change the employee's ultimate benefit under the MPERS DC plans. The legislation provides clear thresholds for the adjustments to the ACRs, but does not provide a formula or clear parameters in terms of the amount of the adjustments.

Our concern is that, because a member's benefit from the MPERS DC plan is valued by the total of a member's account at any point in time, this variable contribution provision would affect the value of the MPERS DC benefit in a way that would, arguably, result in an indeterminable benefit.<sup>1</sup> Long-standing guidance provides that a money purchase pension plan must provide "definitely determinable" benefits. For history on this requirement, see Rev. Rul.

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<sup>1</sup> See MPERS DC Section 3.02 which carefully outlines employer contributions.

65-178, 1965-2 C.B. 94; Rev. Rul. 69-421, 1969-2 C.B. 59; Publication 778 (February 1972). This requirement is currently found at Treas. Reg. §1.401-1(b)(1)(i):

"plan designed to provide benefits for employees or their beneficiary to be paid upon retirement or over a period of years after retirement will, for the purposes of section 401(a), be considered a pension plan if the employer contributions under the plan can be determined actuarially on the basis of definitely determinable benefits, or, as in the case of money purchase pension plan, such contributions are fixed without being geared to profits."

Typically, part of the historical guidance revolved around forfeitures being required to reduce employer contributions or pay plan expenses in a pension plan, and being reallocated in a profit sharing plan. MCA 19-3-2117(b)(4) provides forfeitures in the MPERS DC plan are used to meet the plan's administrative expenses, which would be permissible in a pension or profit sharing plan.

### **ANALYSIS WITH REGARD TO FIDUCIARY ISSUES**

The Public Employees' Retirement Board ("Board") created under 2-15-1009, MCA are the fiduciaries of the MPERS DB and MPERS DC plans. As provided in Article VIII, Section 15 of the Montana State Constitution:

(1) Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses.

(2) The governing boards of public retirement systems shall administer the system, including actuarial determinations, as fiduciaries of system participants and their beneficiaries.

(Emphasis added)

19-2-511(1), MCA provides that:

The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

The MPERS DB plan and the MPERS DC plan are separate plans, each of which is a qualified governmental plan under Code Sections 401(a) and 414(d). 19-2-501, MCA and 19-2-1010, MCA. One of the requirements for a qualified governmental plan is that the plan assets must be held in a trust created or organized in the United States.<sup>2</sup> Therefore, the Board should look to common law trust principles and state law requirements in order to maintain the trusts for the MPERS DB and MPERS DC plans.

Code Section 401(a) requires that the plan of the employer be "for the exclusive benefit of [the employer's] employees or their beneficiaries . . . ." Therefore, the plans may not benefit a person other than the employee or their beneficiaries. Accordingly, the Internal Revenue Service ("IRS") has held that "funds accumulated under a qualified plan in trust are intended primarily for distribution to employee participants."<sup>3</sup> This also means that decisions made by the Board must be for the exclusive benefit of the participants in the plans and their beneficiaries. This requirement is set forth in 19-2-505(2), MCA (2):

The assets of the retirement systems, including the assets of retirement accounts, may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

When considering its fiduciary responsibilities, the Board should consider the Restatement Third, Trusts, which is the compilation of the common law of trusts for the United States. The Restatement Third, Trusts can be applicable to statutory standards "both by analogy and when those rules incorporate general principles of trust law."

We believe that there are three key areas that should be considered with respect to this draft legislation.

1. The Exercise of Trustees' Powers<sup>4</sup>

All powers held as a trustee, whether they are expressed or implied, are held in a fiduciary capacity and their exercise or nonexercise is subject to the fiduciary duties of trusteeship. As applied to the Board, this would mean that every power or duty given to them under Montana law must be exercised in accordance with fiduciary principles.

2. Duty to Administer the Trust in Accordance with Its Terms and Applicable Law<sup>5</sup>

Under this standard, the Board has the duty to administer the trust diligently and in good faith, in accordance with the terms of the trust and applicable law. The Board is responsible for

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<sup>2</sup> Treas. Reg. § 1.401-1(a)(3)(i); Rev. Rul. 69-231, 1969-1 C.B. 118.

<sup>3</sup> Rev. Rul. 72-240, 1972-1 CB 108.

<sup>4</sup> Restatement Third, Trusts, § 85, comment b(2).

<sup>5</sup> Restatement Third, Trust, §76.

ascertaining their duties and powers, collecting and protecting property, and understanding the purposes of the trust with respect to the participants and their beneficiaries.

Under trust law principles, the entity that creates the trust and the plan is referred to as the "settlor." It is the settlor's responsibility to set the terms of benefits. The fiduciary's responsibility is to administer the trust in accordance with its terms. Where the fiduciary is delegated responsibility for benefit decisions, the settlor must set parameters for those benefit decisions. This approach is contained in 19-2-403(11), MCA which provides:

The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

This MCA provision reflects the division of function between the Board and the legislature – the Board makes recommendations to the legislature for action with regard to changes in benefits in the MPERS DB plan or in contributions to the MPERS DC plan, but it is the legislature's prerogative to accept, reject, or modify those recommendations.

If the Bill continued to give the Board the authority to adjust contribution rates, that authority would implicate the definitely determinable requirement for the MPERS DC plan, but not for the MPERS DB plan. (The MPERS DB plan benefits are set under Montana statutes, regardless of what the employer and employee contributions are. On the other hand, the MPERS DC plan benefits are based directly on what the employer and employee contributions are.)

### 3. Duty of Loyalty<sup>6</sup>

A trustee's duty of loyalty is the duty to act in the interest of the trust as if the trustee had no other competing interests to protect. This duty of loyalty, although a component of all fiduciary relationships, is particularly intense in the case of a trust created to provide economic support or benefits for specific beneficiaries.

This duty of loyalty requires the Board to be impartial among any differing interests of participants and beneficiaries or retirees and actives.<sup>7</sup> This duty of impartiality also applies to a fiduciary that administers more than one trust. This duty of impartiality is contained in 19-2-403(7), MCA:

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<sup>6</sup> Restatement Third, Trusts §78.

<sup>7</sup> See also Restatement Third, Trusts §79, Duty of Impartiality.

In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

The above standards under the Restatement are also found in the Uniform Management of Public Retirement Systems Act (1997) ("UMPERSA"), which was recommended for adoption by the National Conference of Commissioners on Uniform State Laws in 1997.<sup>8</sup> We believe it is informative to consider this model act pertaining to these issues. Although not adopted in Montana, UMPERSA does "translate" and apply the general common law duties to public pensions in a helpful way. UMPERSA takes principles from ERISA, Restatement Third, Trusts, and other uniform acts and compiles them for public sector retirement systems, such as the Plans. Under UMPERSA, the trustee of the public pension plan has exclusive authority to manage the assets of the plan, which are held in trust. The basic rule applicable to trustees and fiduciaries with respect to a public retirement system is stated in UMPERSA §7 as follows:

A trustee or other fiduciary shall discharge duties with respect to a retirement system:

- (1) solely in the interest of the participants and beneficiaries;
- (2) for the exclusive purpose of providing benefits to participants and beneficiaries and paying reasonable expenses of administering the system;
- (3) with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;
- (4) impartially, taking into account any differing interests and participants and beneficiaries;
- (5) incurring only costs that are appropriate and reasonable;  
and
- (6) in accordance with a good faith interpretation of the law governing the retirement program and system.

(Emphasis added.)

The Bill raises concerns with respect to the Board's fiduciary duty under the Code Section 401(a)(2), under the Restatement Third, Trusts, and UMPERSA because the Bill places

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<sup>8</sup> UMPERSA was recommended by the American Bar Association as "an appropriate Act for those states and territories desiring to adopt the specific substantive law suggested therein" on February 2, 1998.

the Board in the position of setting contribution levels for MPERS DB plan and MPERS DC plan members in ways that will have different impacts on the two groups of individuals.

For example under Section 1 of the legislation, the Board may decrease the member ACR by as much as 1% - from 7.9% to 6.9%. If this reduction is made, the MPERS DB plan member will not suffer any change in their eventual MPERS DB plan benefit. However, under MCA 19-3-2117(1), only 6.9% would be available for the MPERS DC plan member's account. This directly decreases the member's savings toward retirement (i.e. their benefit). The same issue arises if the Board decides to partially reduce the member ACR – there is no impact on the MPERS DB member benefit for a retiree, but the MPERS DC member's eventual retirement benefit is reduced.

The Bill gives comparable authority to the Board with regard to the adjustment of the Employer ACR. If the Board reduces the Employer ACR, there is no direct impact on the members of the MPERS DB plan, but there is a direct impact on the members of the MPERS DC plan, because the change reduces the amount of contributions to the member accounts.

Finally, we are concerned that the Bill gives the Board the authority to choose between an employer ACR increase/decrease and a member ACR increase/decrease. Requiring the Board to make such a choice without settlor guidance places the Board in an impossible position under the Code exclusive benefit rule with respect to the MPERS DC plan.

### **ALTERNATIVE APPROACHES TO MITIGATE CODE ISSUES**

We think there are two approaches that would mitigate any potential IRS concerns. Both of these would require a legislative change. We have covered them in this section.

1. In order to maintain the status of the MPERS DC plan as a money purchase plan, we would recommend that the legislation be made more specific so that it contains formulae to determine the contributions to the MPERS DC plan. This recommendation dovetails with our recommendations for mitigating fiduciary issues.
2. As an alternative to maintaining the MPERS DC as a money purchase plan (with a definitely determinable benefit requirement), the legislature could redesign the plan to be a profit sharing plan. We understand that Montana is a state governmental entity, nevertheless, the IRS rulings have held that such entities can sponsor profit sharing plans. Long-standing guidance provides that a "profit-sharing" plan must provide a "definite predetermined formula" for allocating contributions among participants and for distributing benefits. For history on this requirement see Rev. Rul. 69-421, 1969-2 C.B. 59. This requirements is currently found at Treas. Reg. §1.401-1(b)(1)(ii) –

"Plan must provide a definite predetermined formula for allocating the contributions made to the plan among the participants.

\* \* \*

A formula for allocating the contributions among the participants is definite if, for example, it provides for an allocation in proportion to the basic compensation of each participant. A plan (whether or not it contains a definite predetermined formula for determining the profits to be shared with the employees) does not qualify if [the contributions discriminate]."

The allocation between members would remain the same on a pro-rata basis, whatever the actual contribution was.

Changing the MPERS DC plan to a profit-sharing plan does not resolve the fiduciary issues.

With either approach, we note that the MPERS DC plan and the MPERS DB plan are scheduled for submission to the IRS for Cycle E determination letters in 2015.

#### **APPROACHES TO ADDRESS FIDUCIARY ISSUES**

We have marked up the Bill to suggest two different approaches to addressing the fiduciary issues. In both approaches, we recommend that the Member ACR and the Employer ACR move in tandem. This would address our concern that the Board should not be placed in a position of having to choose between the employers' interest and the members' interest.

1. In the first approach, the Board must either decrease or increase both Member ACR and Employer ACR by 1%. This means that, if the thresholds are met for a decrease for both the Member ACR and the Employer ACR, the contribution rates for both would decrease to 6.9%. Thereafter, if the thresholds are met for an increase for both the Member ACR and the Employer ACR, the contribution rates would both increase to 7.9%.
2. In the second approach, the Board must decrease both the Member ACR and Employer ACR in a step-down of the 1% once the thresholds are met. For example, after the thresholds are met the 1% would be reduced by .25% every year for 4 years. In the event of an increase, we provided for a .25% increase every year for 4 years, which could either eliminate the decrease of .25% that would otherwise have "kicked in" (if within a 4 year phase in period for a decrease) or would simply be an increase (if no 4 year phase in was occurring).

We would be happy to discuss this memorandum with you in further detail. If you need any other materials or further explanation from us before the Board meeting in August, please do not hesitate to let us know.

## **CONCLUSIONS**

Under current Montana law, the MPERS DB plan and MPERS DC plan contributions are linked. Therefore, a change in MPERS DB plan employee or employer contributions has an impact on MPERS DC plan contributions. This link in the adjustment of MPERS DB plan contributions under the Bill, without further concreteness on the basis for any adjustment, raises Code compliance issues for the MPERS DC plan, because the contributions would not be definitely determinable (a Code requirement).

We are also concerned that this linkage between the MPERS DB and DC plans places the Board in a very difficult fiduciary position – because a reduction in employee or employer contributions to the MPERS DB plan will result in lower contributions and lower benefits from the MPERS DC plan.

Attachments: Chart regarding Montana Proposed Bill  
Mark-Up of Approach #1  
Mark-UP of Approach #2

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the State Administration and Veterans' Affairs Interim  
Committee

A Bill for an Act entitled: "An Act providing that a portion of the member and employer contributions to the public employees' retirement system shall be increased or decreased by the public employees' retirement board based on the actuarial funding status of the system's defined benefit plan; amending sections 19-3-315, 19-3-316, and 19-3-2121, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Adjustable member contribution rate.**

(1) One percent of the member contribution rate under 19-3-315 is subject to adjustment as provided in this section.

(2) (a) After the temporary contribution in 19-3-316(3) terminates pursuant to 19-3-316(4)(b), the adjustable member contribution rate specified subsection (1) shall be decreased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or greater than 90%;

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent annual actuarial valuation is less than 15 years; and

(iii) the guaranteed annual benefit adjustment has been increased to the maximum allowed under 19-3-1605.

(b) The adjustable member contribution rate shall be reduced by the same percentage amount as a decrease in the adjustable employer contribution rate under [section 2] so that the combined adjustment provides for an amortization schedule in the defined benefit plan of 17.5 years based on the actuarial data used for the plan's most recent annual actuarial valuation. However, the adjustable member contribution rate may not be reduced to less than 0%.

(3) (a) After the adjustable member contribution rate is decreased pursuant to subsection (2), the adjustable member contribution rate shall be increased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent annual actuarial valuation is greater than 20 years.

(b) The adjustable member contribution rate shall be increased by the same percentage amount as an increase in the adjustable employer contribution rate under [section 2] so that the combined adjustment provides for an amortization schedule in the defined benefit plan of 17.5 years based on the actuarial data used for the plan's most recent annual actuarial valuation. However, the adjustable member contribution rate may not exceed 1%.

(4) After the board has actuarially determined the need to

increase or decrease the adjustable contribution rate under this section, the increase or decrease is effective July 1 in the calendar year following the board's determination.

NEW SECTION. **Section 2. Adjustable employer contribution rate.** (1) One percent of the employer contribution rate under 19-3-316(1) is subject to adjustment as provided in this section.

(2) (a) After the additional employer contribution under 19-3-316(3) terminates pursuant to 19-3-316(4)(b), the adjustable employer contribution rate in subsection (1) shall be decreased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or greater than 90%;

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent actuarial valuation is less than 15 years; and

(iii) the guaranteed annual benefit adjustment has been increased to the maximum allowed under 19-3-1605.

(b) The adjustable employer contribution rate shall be decreased by the same percentage amount as a decrease in the adjustable member contribution rate under [section 1] so that the combined adjustment provides for an amortization schedule in the defined benefit plan of 17.5 years based on the actuarial data used for the plan's most recent annual actuarial valuation. However, the adjustable employer contribution rate may not be less than 0%.

(3) (a) After the adjustable contribution rate is decreased

pursuant to subsection (2), the adjustable employer contribution rate shall be increased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent annual actuarial valuation is greater than 20 years.

(b) The adjustable employer contribution rate shall be increased by the same percentage amount as an increase in the adjustable member contribution under [section 1] so that the combined adjustment provides for an amortization schedule in the defined benefit plan of 17.5 years based on the actuarial data used for the plan's most recent annual actuarial valuation. However, the adjustable employer contribution rate may not exceed 1%.

(4) After the board has actuarially determined the need to increase or decrease an adjustable employer contribution rate under this section, the increase or decrease is effective July 1 in the calendar year following the board's determination.

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

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

(b) The board shall annually review the required contributions and recommend future adjustments to the legislature as needed to

maintain the amortization schedule set by the board for the payment of the system's unfunded liability.

~~(2) Each member's contribution must be reduced to 6.9% on January 1 following the system's annual actuarial valuation if the valuation determines that reducing the employee contribution pursuant to this subsection and reducing the employer contribution pursuant to 19-3-316(4) would not cause the system's amortization period to exceed 25 years.~~

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

~~(4)~~(3) Each employer, pursuant to section 414(h) (2) of the federal Internal Revenue Code, 26 U.S.C. 414(h) (2), shall pick up and pay the contributions that would be payable by the member under subsection (1) ~~or (2)~~ for service rendered after June 30, 1985.

~~(5)~~(4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

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

(c) In the case of a member of the defined contribution plan,

these contributions must be allocated as provided in 19-3-2117.

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

{Internal References to 19-3-315:

x19-2-1004      a19-3-316              x19-3-511                      x19-3-1113  
x19-3-2117      x19-21-214 }

**Section 4.** Section 19-3-316 , MCA, is amended to read:

**"19-3-316. Employer contribution rates.** (1) Each employer shall contribute to the system. Except as provided in subsection (2) and subject to [section 2], the employer shall pay as employer contributions ~~6.9%~~ 7.9% 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) (b), 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%~~ .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%~~ 1.27%.

(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."

{ Internal References to 19-3-316:

x19-3-108	x19-3-112	x19-3-315	x19-3-319
x19-3-511	x19-3-1113	x19-3-1113	x19-3-2117
x19-3-2117	x19-3-2117	x19-21-214	x19-21-214

x20-9-501 }

**Section 5.** Section 19-3-2121 , MCA, is amended to read:

**"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.** (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2) (a) (ii) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the compensation paid to all of the members in the defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined

contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2) (a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4) (a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease

in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2) (a) (ii) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2) (a) (i) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2) (a) (i) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under 19-3-2117(2) (a) (iv) should be increased, the employer contribution to each member's account under 19-3-2117(2) (a) (i) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117(2) (a) (iv) should be decreased, the employer contribution to each member's account under 19-3-2117(2) (a) (i) must be increased by that amount.

(7) If the employer contribution is decreased or increased pursuant to [section 2], allocation of the employer contribution to each member's account under 19-2-2117(2) (a) (i) must be decreased or increased by the amount of the contribution decrease or increase.

(8) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the

governor, and the legislature of its determination and of the changes required.

~~(8)~~(9) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

{Internal References to 19-3-2121:

x19-2-303          x19-2-407          x19-3-2117          x19-21-214 }

**NEW SECTION. Section 6. {standard} Codification instruction.**

[Sections 1 and 2] are 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 [sections 1 and 2].

**NEW SECTION. Section 7. {standard} Effective date.** [This act]

is effective July 1, 2015.

- END -

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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the State Administration and Veterans' Affairs Interim  
Committee

A Bill for an Act entitled: "An Act providing that a portion of the member and employer contributions to the public employees' retirement system shall be increased or decreased by the public employees' retirement board based on the actuarial funding status of the system's defined benefit plan; amending sections 19-3-315, 19-3-316, and 19-3-2121, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Adjustable member contribution rate.**

(1) One percent of the member contribution rate under 19-3-315 is subject to adjustment as provided in this section.

(2) (a) After the temporary contribution in 19-3-316(3) terminates pursuant to 19-3-316(4)(b), the adjustable member contribution rate specified subsection (1) shall be decreased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or greater than 90%;

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent annual actuarial valuation is less than 15 years; and

(iii) the guaranteed annual benefit adjustment has been increased to the maximum allowed under 19-3-1605.

(b) The adjustable member contribution rate shall be decreased by 0.05% for each 1%, determined by rounding any fraction of a percent to the nearest whole number percent, that the average funded ratio is greater than 90%. However, the adjustable employer contribution rate may not be less than 0%.

(3) (a) After the adjustable member contribution rate is decreased pursuant to subsection (2), the adjustable member contribution rate shall be increased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent annual actuarial valuation is greater than 20 years.

(b) The adjustable member contribution rate shall be increased by 0.05% for each 1%, determined by rounding any fraction of a percent to the nearest whole number percent, that the average funded ratio is less than 80%. However, the adjustable contribution rate may not exceed 1%

(4) After the board has actuarially determined the need to increase or decrease the adjustable contribution rate under this section, the increase or decrease is effective July 1 in the calendar year following the board's determination.

NEW SECTION. **Section 2. Adjustable employer contribution**

**rate.** (1) One percent of the employer contribution rate under 19-3-316(1) is subject to adjustment as provided in this section.

(2) (a) After the additional employer contribution under 19-3-316(3) terminates pursuant to 19-3-316(4)(b), the adjustable employer contribution rate in subsection (1) shall be decreased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or greater than 90%;

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent actuarial valuation is less than 15 years; and

(iii) the guaranteed annual benefit adjustment has been increased to the maximum allowed under 19-3-1605.

(b) The adjustable employer contribution rate shall be decreased by 0.05% for each 1%, determined by rounding any fraction of a percent to the nearest whole number percent, that the average funded ratio is greater than 90%. However, the adjustable employer contribution rate may not be less than 0%.

(3) (a) After the adjustable contribution rate is decreased pursuant to subsection (2), the adjustable employer contribution rate shall be increased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the

defined benefit plan based on the most recent annual actuarial valuation is greater than 20 years.

(b) The adjustable employer contribution rate shall be increased by 0.05% for each 1%, determined by rounding any fraction of a percent to the nearest whole number percent, that the average funded ratio is less than 80%. However, the adjustable employer contribution rate may not exceed 1%.

(4) After the board has actuarially determined the need to increase or decrease the adjustable employer contribution rate under this section, the increase or decrease is effective July 1 in the calendar year following the board's determination.

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

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

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

~~(2) Each member's contribution must be reduced to 6.9% on January 1 following the system's annual actuarial valuation if the valuation determines that reducing the employee contribution pursuant to this subsection and reducing the employer contribution pursuant to 19-3-316(4) would not cause the system's amortization period to exceed 25 years.~~

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

~~(4)~~(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, 26 U.S.C. 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) ~~or (2)~~ for service rendered after June 30, 1985.

~~(5)~~(4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

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

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

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

{ Internal References to 19-3-315:

x19-2-1004      a19-3-316                      x19-3-511                      x19-3-1113

x19-3-2117      x19-21-214 }

**Section 4.** Section 19-3-316 , MCA, is amended to read:

**"19-3-316. Employer contribution rates.** (1) Each employer shall contribute to the system. Except as provided in subsection (2) and subject to [section 2], the employer shall pay as employer contributions ~~6.9%~~ 7.9% 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) (b), 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%~~ .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%~~ 1.27%.

(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."

{Internal References to 19-3-316:

x19-3-108	x19-3-112	x19-3-315	x19-3-319
x19-3-511	x19-3-1113	x19-3-1113	x19-3-2117
x19-3-2117	x19-3-2117	x19-21-214	x19-21-214

x20-9-501 }

**Section 5.** Section 19-3-2121 , MCA, is amended to read:

**"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.** (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2) (a) (ii) must be

adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the compensation paid to all of the members in the defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund

the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2) (a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4) (a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2) (a) (ii) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2) (a) (i) must be decreased by that amount. If the plan choice rate is decreased, the

allocation of employer contributions to member accounts under 19-3-2117(2) (a) (i) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under 19-3-2117(2) (a) (iv) should be increased, the employer contribution to each member's account under 19-3-2117(2) (a) (i) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117(2) (a) (iv) should be decreased, the employer contribution to each member's account under 19-3-2117(2) (a) (i) must be increased by that amount.

(7) If the employer contribution is decreased or increased pursuant to [section 2], allocation of the employer contribution to each member's account under 19-2-2117(2) (a) (i) must be decreased or increased by the amount of the contribution decrease or increase.

(8) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

~~(8)~~(9) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

{Internal References to 19-3-2121:

x19-2-303

x19-2-407

x19-3-2117

x19-21-214 }

NEW SECTION. **Section 6. {standard} Codification instruction.**

[Sections 1 and 2] are 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 [sections 1 and 2].

NEW SECTION. **Section 7. {standard} Effective date.** [This act]

is effective July 1, 2015.

- END -

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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the State Administration and Veterans' Affairs Interim  
Committee

A Bill for an Act entitled: "An Act providing that a portion of the member and employer contributions to the public employees' retirement system shall be increased or decreased by the public employees' retirement board based on the actuarial funding status of the system's defined benefit plan; amending sections 19-3-315, 19-3-316, and 19-3-2121, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Adjustable member contribution rate.**

(1) One percent of the member contribution rate under 19-3-315 is subject to adjustment as provided in this section.

(2) (a) After the temporary contribution in 19-3-316(3) terminates pursuant to 19-3-316(4)(b), the adjustable member contribution rate specified subsection (1) shall be decreased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or greater than 90%;

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent annual actuarial valuation is less than 15 years; and

(iii) the guaranteed annual benefit adjustment has been increased to the maximum allowed under 19-3-1605.

(b) The adjustable member contribution rate shall be decreased by 0.05% for each year, determined by rounding any fraction of a year to the nearest full year, that the amortization schedule is less than 15 years. However, the adjustable member contribution rate may not be reduced to less than 0%.

(3) (a) After the adjustable member contribution rate is decreased pursuant to subsection (2), the adjustable member contribution rate shall be increased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent annual actuarial valuation is greater than 20 years.

(b) The adjustable member contribution rate shall be increased by 0.05% for each year, determined by rounding any fraction of a year to the nearest full year, that the amortization schedule is greater than 20 years. However, the adjustable member contribution rate may not exceed 1%.

(4) After the board has actuarially determined the need to increase or decrease the adjustable contribution rate under this section, the increase or decrease is effective July 1 in the calendar year following the board's determination.

NEW SECTION. **Section 2. Adjustable employer contribution**

**rate.** (1) One percent of the employer contribution rate under 19-3-316(1) is subject to adjustment as provided in this section.

(2) (a) After the additional employer contribution under 19-3-316(3) terminates pursuant to 19-3-316(4)(b), the adjustable employer contribution rate in subsection (1) shall be decreased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or greater than 90%;

(ii) the period necessary to amortize all liabilities of the defined benefit plan based on the most recent actuarial valuation is less than 15 years; and

(iii) the guaranteed annual benefit adjustment has been increased to the maximum allowed under 19-3-1605.

(b) The adjustable employer contribution rate shall be decreased by 0.05% for each year, determined by rounding any fraction of a year to the nearest full year, that the amortization schedule is less than 15 years. However, the adjustable employer contribution rate may not be less than 0%.

(3) (a) After the adjustable contribution rate is decreased pursuant to subsection (2), the adjustable employer contribution rate shall be increased if:

(i) the average funded ratio of the defined benefit plan based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the

defined benefit plan based on the most recent annual actuarial valuation is greater than 20 years.

(b) The adjustable employer contribution rate shall be increased by 0.05% for each year, determined by rounding any fraction of a year to the nearest full year, that the amortization schedule is greater than 20 years. However, the adjustable employer contribution rate may not exceed 1%.

(4) After the board has actuarially determined the need to increase or decrease the adjustable employer contribution rate under this section, the increase or decrease is effective July 1 in the calendar year following the board's determination.

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

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

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

~~(2) Each member's contribution must be reduced to 6.9% on January 1 following the system's annual actuarial valuation if the valuation determines that reducing the employee contribution pursuant to this subsection and reducing the employer contribution pursuant to 19-3-316(4) would not cause the system's amortization period to exceed 25 years.~~

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

~~(4)~~(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, 26 U.S.C. 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) ~~or (2)~~ for service rendered after June 30, 1985.

~~(5)~~(4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

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

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

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

{ Internal References to 19-3-315:

x19-2-1004      a19-3-316              x19-3-511                      x19-3-1113  
x19-3-2117      x19-21-214 }

**Section 4.** Section 19-3-316 , MCA, is amended to read:

**"19-3-316. Employer contribution rates.** (1) Each employer shall contribute to the system. Except as provided in subsection (2) and subject to [section 2], the employer shall pay as employer contributions ~~6.9%~~ 7.9% 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) (b), 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%~~ .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%~~ 1.27%.

(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."

{ Internal References to 19-3-316:

x19-3-108	x19-3-112	x19-3-315	x19-3-319
x19-3-511	x19-3-1113	x19-3-1113	x19-3-2117
x19-3-2117	x19-3-2117	x19-21-214	x19-21-214

x20-9-501 }

**Section 5.** Section 19-3-2121 , MCA, is amended to read:

**"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.** (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2) (a) (ii) must be

adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the compensation paid to all of the members in the defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund

the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2) (a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4) (a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2) (a) (ii) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2) (a) (i) must be decreased by that amount. If the plan choice rate is decreased, the

allocation of employer contributions to member accounts under 19-3-2117(2) (a) (i) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under 19-3-2117(2) (a) (iv) should be increased, the employer contribution to each member's account under 19-3-2117(2) (a) (i) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117(2) (a) (iv) should be decreased, the employer contribution to each member's account under 19-3-2117(2) (a) (i) must be increased by that amount.

(7) If the employer contribution is decreased or increased pursuant to [section 2], allocation of the employer contribution to each member's account under 19-2-2117(2) (a) (i) must be decreased or increased by the amount of the contribution decrease or increase.

(8) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

~~(8)~~(9) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination."

{Internal References to 19-3-2121:

x19-2-303

x19-2-407

x19-3-2117

x19-21-214 }

NEW SECTION. **Section 6. {standard} Codification instruction.**

[Sections 1 and 2] are 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 [sections 1 and 2].

NEW SECTION. **Section 7. {standard} Effective date.** [This act]

is effective July 1, 2015.

- END -

{Name : Sheri S. Scurr  
Title : Research Analyst  
Agency : Legislative Services Division  
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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the State Administration and Veterans' Affairs Interim  
Committee

A Bill for an Act entitled: "An Act revising the allocation of employer contributions and the effective date for changes in the allocation of employer contributions in the public employees' retirement system defined contribution plan and the university system retirement program; amending sections 19-3-2117, 19-3-2121, and 19-21-214, MCA; and providing an immediate effective date and a retroactive applicability date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 19-3-2117 , MCA, is amended to read:

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

(2) Subject to subsection (3) and adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member's retirement account;

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

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

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

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), the percentage of compensation specified in subsection (3) of this section ~~of compensation~~ must be allocated in the following order:

(i) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

(ii) to the long-term disability plan trust fund to provide disability benefits to eligible members; and

(c) on July 1, 2013, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b) June 30, 2015, 1% of compensation must be allocated to the defined benefit plan unfunded liabilities; and

(d) on July 1, 2015, continuing until the plan choice rate unfunded liability in the defined benefit plan is fully paid, 1% of compensation must be allocated to the defined benefit plan to as part of the plan choice rate. Effective the first full pay period of the month following the board's verification that the plan choice rate unfunded actuarial liability is fully paid, the 1% of compensation must be allocated to the member's account.

(3) The percentage of compensation to be contributed under

subsection (2) (b) is 0.27% 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 (2) (b) is 1.27%. If the plan choice rate unfunded actuarial liability is paid off prior to the termination of the additional contributions pursuant to 19-3-316(4) (b), effective the first full pay period of the month following the board's verification that the plan choice rate unfunded actuarial liability is fully paid, the percentage of compensation allocated as part of the plan choice rate under this section must be allocated to the member's account until the additional contributions terminate pursuant to 19-3-316(4) (b).

(4) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

{Internal References to 19-3-2117: ~~x to all~~

19-2-303	19-2-405	19-2-715	19-3-315
19-3-316	19-3-2114	19-3-2114	19-3-2114
19-3-2116	19-3-2121	19-3-2121	19-3-2121
19-3-2121	19-3-2121	19-3-2121	19-3-2121
19-3-2121	19-3-2121	19-3-2121	19-3-2121
19-3-2126	19-3-2126 }		

**Section 2.** Section 19-3-2121 , MCA, is amended to read:

**"19-3-2121. Determination and adjustment of plan choice rate and contribution allocations.** (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the

allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2)(a)(ii) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the compensation paid to all of the members in the defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the

measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2) (a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4) (a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under

19-3-2117(2) (a) (ii) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2) (a) (i) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2) (a) (i) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under 19-3-2117(2) (a) (iv) should be increased, the employer contribution to each member's account under 19-3-2117(2) (a) (i) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117(2) (a) (iv) should be decreased, the employer contribution to each member's account under 19-3-2117(2) (a) (i) must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective A change in the allocation of contributions pursuant to this section is effective January 1 ~~of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to~~ following the board's determination."

{ Internal References to 19-3-2121:

x19-2-303

x19-2-407

x19-3-2117

x19-21-214 }

**Section 3.** Section 19-21-214 , MCA, is amended to read:

**"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system.** (1)

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

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

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

(2) Subject to subsection (3), of the employer's contribution:

(a) an amount equal to:

(i) 4.49% of compensation must be allocated to the participant's program account;

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

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

(b) (i) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), 0.27% of compensation must be allocated to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability.

(ii) on July 1, 2013, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), the 0.27% contribution rate under subsection (2)(b)(ii) must be increased by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation allocated under this subsection (2) must be 1.27%. If the plan choice rate liability is paid off before the additional employer contributions terminate pursuant to 19-3-316(4)(b), effective the first full pay period of the month following the board's verification that the plan choice rate is fully paid, the percentage of compensation allocated to the plan choice rate under this subsection must be allocated to the program participant's account until the additional contributions terminate pursuant to 19-3-316(4)(b).

(c) on July 1, 2013, continuing until June 30, 2015, 1% of compensation must be allocated to the defined benefit plan unfunded liabilities.

(d) on July 1, 2015, 1% of compensation must be allocated to the defined benefit plan to pay the plan choice rate unfunded actuarial liability. Effective the first full pay period of the month following verification by the public employees' retirement board that the plan choice rate unfunded actuarial liability is fully paid, the 1% of compensation must be allocated to the program participant's account.

(3) The allocations under subsection (2)(a) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions

of 19-3-2121."

{*Internal References to 19-21-214:*

*x19-21-203 }*

NEW SECTION. **Section 4. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. {standard} Retroactive applicability.** [Section 3(2)(b) and (c)] applies retroactively, within the meaning of 1-2-109, to contributions under 19-21-214(2)(b) on and after July 1, 2013.

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