Office of Research and Policy Analysis

# Draft Final Report for HJR 35:
## Bonus Pay Policy and Practices in Montana State Government

A REPORT TO THE 62ND MONTANA LEGISLATURE

Prepared by
Dave Bohyer, Research Director

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Montana Legislative Services Division
P.O. Box 201706
Helena, MT 59620-1706
www.leg.state.mt.gov
(406) 444-3064 FAX: (406) 444-3036

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# *Executive Summary*

Following the 2008 general election, the outgoing Secretary of State authorized over $55,000 in performance awards to several of his employees, to be paid 2 week after he left office. The incoming Secretary challenged the legality of the awards and, ultimately, denied paying the bonuses.

The situation garnered headlines among the state's newspapers, as well as the attention of the 61st Montana Legislature. Three bills were introduced that attempted to revise the law in ways that would limit or preclude the payment of a bonus to certain state employees. None of the bills survived the legislative process, but were the impetus for the drafting, consideration, and eventual passage of House Joint Resolution No. 35, a resolution requesting an interim legislative study of pay policies and practices on bonuses for state government employees.

The State Administration and Veterans' Affairs Interim Committee (SAVA) undertook the HJR 35 study by initially examining the law on bonus pay for state employees. The members found that existing law, specifically section 2-18-621, MCA, is sufficient to preclude the type of bonus payments that provoked the study, i.e., bonuses given by elected officials as they leave office to selected, typically exempt staffers who are also likely to leave their jobs as a result of the elected official leaving office.

After completing that element of the HJR 35 study, the SAVA turned its attention to evaluating Montana state agencies' policies and practices on providing bonuses.

A lack of useable data frustrated staff's research into the scope, frequency, and size of bonus payments to state government employees. The research attempted by staff revealed that although detailed records are kept on state employees' compensation, the data in the records does not necessarily reflect uniform application of policies or practices among or even within individual state agencies. Consequently, the Committee was unable to evaluate agencies' practices in regard to awarding bonuses.

Comparing bonus policies within state agencies proved to be only marginally more successful. The SAVA found that Department of Administration has adopted operational rules that govern the general implementation of the broadband pay system legislatively authorized in 2007, but that the rules do not provide very specific guidance, particularly on the subject of bonus pay.

Further, the Committee found that although the administrative rules require each agency to design, implement, and administer written pay rules for the agency within the parameters of the rules adopted by the Department of Administration and to file the adopted rules with the Department, not all agencies were in compliance.

The body of this report is composed of three parts. Part 1 examines in more detail the impetus for the HJR 35 study of state policy and practice regarding bonus pay and the findings and recommendations of the SAVA regarding those policies and practices.

Part 2 assesses Montana's position in the context of "best practices" regarding bonus pay, some additional research, analysis, and findings related to the basic subject of state employee compensation, and the Committee's recommendations.

Part 3 reports information and analysis on several questions raised by SAVA members during discussion of bonus pay. The questions and staff responses are including in this part as part of the Committee's final report even though the questions are more germane within a broader discussion of state employee compensation.

## INTRODUCTION AND BACKGROUND

By adopting House Joint Resolution No. 35, the 61st Montana Legislature requested an interim committee to examine the application and administration of "bonus pay" among state government employees. The study was assigned to the State Administration and Veterans' Affairs Interim Committee (SAVA) in June 2009, and staff for the SAVA proposed a study outline to the Committee members at the June 26, 2009, SAVA meeting.

The HJR 35 study was prompted in large part by the actions of a statewide elected official who was defeated at the November 2008 poll and, subsequently, awarded bonuses to several of his exempt staff immediately before leaving office.[1] The newly-elected and incoming elected official cancelled the bonuses after a Department of Administration (DoA) attorney had determined them to be illegal.[2]

The law upon which the DoA attorney mainly determined the bonuses to be illegal is section 2-18-621, MCA.

> **2-18-621. Unlawful termination -- unlawful payments.** (1) It is unlawful for an employer to terminate or separate an employee from employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. If a question arises under this subsection, it must be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is an applicable collective bargaining agreement to the contrary.
>
> (2) (a) An employee who terminates employment is entitled to receive only:
>
> (i) payments for accumulated wages, vacation leave as provided in

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1 "Secretary of state: Brad Johnson bonuses put on hold", by Charles S. Johnson, Jan. 10, 2009, in *The Missoulian*. Secretary of State Brad Johnson had lost his reelection bid in November 2008 and the nine employees were all "exempt", personal staff who served at the pleasure of the Secretary of State.

2 "State lawyer says bonuses illegal", by Charles S. Johnson, January 15, 2009, in *The Montana Standard*. Section 2-18-621, MCA, had been amended in the 2007 Session as well, for circumstances different from those generating the January 2009 attention. See Ch. 341, L. 2007; (SB 219, 2007).

2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer; and

(ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.

(b) An employee who terminates employment may not receive severance pay, a bonus, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).

(3) Subsection (2) does not apply to:

(a) retirement benefits;

(b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal dispute, claim, grievance, contested case, or lawsuit; or

(c) any other payment authorized by law. (*Emphasis added.)*

Although the proposed bonuses were illegal and never paid, three members of House of Representatives introduced legislation to further restrict the payment of bonuses to state employees: HB 358 (Bergren), HB 576 (Warburton), and HB 594 (Hunter). Each of the bills was heard by the House State Administration Committee during mid-February 2009. The three bills each addressed the issue of bonus pay in a slightly different manner from the others. In short:

- SB 358 would have prohibited a statewide elected official from paying the official's [exempt] personal staff any type of bonus, termination pay, performance pay, or other special compensation between the date of the general election immediately preceding the expiration of the official's term and the date that the official's term expires.
- HB 576 would have prohibited the governor, the lieutenant governor, the attorney general, the secretary of state, the state auditor, or the superintendent of public instruction from paying to an employee in an "exempt position" a bonus, a monetary payment, or a salary increase, other than a statutorily prescribed increase during the fiscal year in which the state officer is seeking reelection or election to another state office.
- HB 594 would have prohibited a state officer or state employee, including those employees otherwise exempt under section 2-18-103, MCA, from receiving a bonus or any type of monetary payment, other

than normal salary or wages, in excess of $1,000 during a fiscal year.

None of the three bills passed. Instead, the House State Administration Committee commissioned LC 2325, which became HJR 35.

In the original study outline for HJR 35 SAVA staff proposed a multi-phased study by which the SAVA would establish a foundation of facts and understanding regarding bonus pay as a concept and, subsequently, the ways in which bonus pay is applied and administered within Montana State Government.[3]

Phase I. Build a foundation of facts and evidence regarding public employee compensation defined, described, or recognized as bonus pay, performance-based pay, merit pay, competency-based pay, incentive pay, statutory pay (increases), and the like.

Phase II. Identify and analyze specific factors perceived by the Committee to be relevant to further discussion of state employee compensation referred to as bonus pay, performance-based pay, merit pay, competency-based pay, incentive pay, statutory pay (increases), and the like.

Phase III. Develop, through Committee discussion and action, findings and conclusions about the policy principles upon which Montana's public policies and practices should be centered as those policies and practices address employee compensation generally referred to as bonus pay, performance-based pay, merit pay, competency-based pay, incentive pay, statutory pay (increases), and the like. Included in this phase should be Committee findings and conclusions regarding the potential fiscal and administrative implications of those policy principles.

Phase IV. Identify, through Committee discussion and action, legislative options for addressing the fiscal, administrative, and ethical soundness of any "bonus-type" of compensation for Montana state employees.

After discussing the impetus for and underpinnings of HJR 35, the fact that the bonuses were never paid, the Committee's other assignments and overall workload, and the Committee's options for limiting the amount

[3] *Proposed Study Outline for HJR 35: A Study of Public Employee Bonuses*, by Dave Bohyer, Research Director, Legislative Services Division, June 10, 2009, pp 8-9.

of staff and Committee time to be invested in the study, the SAVA members directed staff to focus efforts on identifying "best practices" regarding bonus pay and to compare and contrast the state's practices to those identified as the "best practices".[4] Staff's efforts would be reduced to a written report to be provided to SAVA members, stakeholders, and others. At an appropriate meeting, staff would orally review the report and the Committee would allow comments from anyone interested in the topic.[5] From there, the SAVA would ask questions, discuss the information presented, make findings, and determine what, if any, additional research the members believe should be undertaken or if any legislative options should be pursued.

## PART 1: STATUS OF BONUS PAY IN MONTANA STATE GOVERNMENT

State law allows bonus pay as an element of the broadband pay plan, provided the subject is addressed in the granting-agency's pay rules that are in compliance with statute and DoA rules governing broadband pay. In short, an agency's pay rules must prescribe under what circumstances a bonus may be awarded, the process to be followed in determining whether a bonus is warranted, and how to calculate a warranted bonus, among other things.[6]

The situation that precipitated the adoption of HJR 35, i.e., an elected official awarding bonuses to exempt staff prior to leaving office, is

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[4] *Minutes*, State Administration and Veterans' Affairs Interim Committee, June 26, 2009, audio archive at 5:10:40, on the Internet at http://leg.mt.gov/css/Committees/Interim/2009_2010/State_Administration_and_Veterans_Affairs/;
.

[5] On June 24, 2010, SAVA staff orally presented the report, *HJR 35 White Paper: Bonus Pay Policy and Practices in Montana State Government*, by Dave Bohyer, Legislative Services Division, June 2010.

[6] Section 2-18-301, MCA, and *Montana Operations Manual* (MOM) Policy 3-05-1. NOTE: As an internal administrative policy, MOM 3-05-1 is not a "rule" pursuant to the Montana Administrative Procedures Act (MAPA) and, therefore, is not published as a rule in the Administrative Rules of Montana.

precluded by statute.[7]

> **2-18-621. Unlawful termination -- unlawful payments.** (1) ...
>
> (2) (a) An employee who terminates employment is entitled to receive only:
>
> (i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer; and
>
> (ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.
>
> (b) <u>An employee who terminates employment may not receive severance pay, **a bonus**, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).</u>
>
> (3) ...
>
> (*Emphasis added.)*

FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

**<u>DRAFT:</u>** ***SAVA Findings***

> Having reviewed applicable state law and policy, the SAVA finds:
>
> (1) that current law is sufficient to preclude the payment of a bonus in the manner attempted by a elected official following an election defeat or by any other person, including an elected official, who is responsible for making pay decisions and who does not follow the law and pay rules; and
>
> (2) that not all agencies are in compliance with section 2-18-301, MCA, and MOM Policy 3-05-1, specifically the requirements of all agencies to adopt pay rules and to file the pay rules with the DoA.

[7] See 2-28-312, MCA, and *Memorandum* from Mike Manion, Chief Legal Counsel, DoA to Sheryl Olson, Deputy Director, DoA, January 15, 2009.

**DRAFT** ***SAVA Recommendations***

> Therefore, the SAVA recommends:
> (1) that the primary statutes governing bonus pay, both those statutes that allow for bonus pay as part of the broadband pay plan and those that preclude illegal bonus pay, be retained intact; and
> (2) that the Department of Administration exercise its authority to ensure that agencies are in compliance with section 2-18-301, MCA, and MOM Policy 3-05-1.

The SAVA recognizes, however, that there is no way the legislature can preclude an elected official or other individual who is responsible for pay decisions from attempting to award bonus pay in a manner that does not meet the requirements of statute and policy. Only personal ethics, vigorous oversight, or competent investigative reporting by the media will ensure that unwarranted or illegal bonus payments are not made.

## PART 2: BEST PRACTICES REGARDING BONUS PAY AND STATE EMPLOYEE COMPENSATION

Part 2 of this report attempts to focus on: (1) best practices regarding bonus pay as compensation; and (2) process and procedure in Montana state government regarding bonus pay as compensation.

### Working Definitions

In developing a common understanding of and appreciation for seemingly small, semantic differences, it is worthwhile to note the differences between the definitions of "bonus" pay and other terms that connote additional, incentive pay for performance.

*Webster's* defines "bonus" as follows:

**bo·nus** Pronunciation: \'bō-nəs\. Function: *noun*. Etymology: Latin, literally, good — more at bounty . Date: 1773
**:** something in addition to what is expected or strictly due: as **a:** money or an equivalent given in addition to an employee's usual compensation **b:** a premium (as of stock) given by a corporation to a purchaser of its securities, to a promoter, or to an employee **c:** a government payment to war veterans **d:** a sum in excess of salary given an athlete for signing with a team[8]

Comparatively, *Webster's* defines "incentive" as follows:
**in·cen·tive** Pronunciation: \in-'sen-tiv\ Function: *noun*. Etymology: Middle English, from Late Latin *incentivum*, from neuter of *incentivus* stimulating, from Latin, setting the tune, from *incentus*, past participle of *incinere* to play (a tune), from *in-* + *canere* to sing — more at chant. Date: 15th century.
**:** something that incites or has a tendency to incite to determination or action **synonyms** see motive. — **incentive** *adjective* [9]

The subtle difference between a bonus and an incentive in the context of pay is that a bonus is something to which the recipient is not entitled and does not expect, while an incentive is something that is used to promote or reward certain behavior or results and that the recipient can anticipate following the required behavior or results. Therefore, a bonus is typically awarded *ex post facto* for performance or results perceived as superior by the grantor of the bonus, whereas incentive pay is typically defined in advance of performance or results and is earned by the recipient for meeting or exceeding certain performance benchmarks or results preestablished by the grantor.

Therefore, for the purposes of this paper, a "bonus", in the context of public employee compensation, is: "**... an element of compensation that consists of a one-time, lump-sum payment made to an employee. It**

[8] *Merriam-Webster Online Dictionary*. 2010; http://www.merriam-webster.com/ .

[9] Ibid.

**is not part of base pay**". [10] The distinction is important because the literature makes a number of references to "best practices" for various pay-for-performance or "incentive" compensation plans, but is sorely deficient when it comes to best practices regarding "bonus" pay.[11]

UNIVERSAL BEST PRACTICES

It seems that no individual nor any organization has identified or advocated for any particular "best practices" for the design, implementation, or administration of "bonus pay". Rather, bonus pay is most commonly considered but one among several types of "variable pay" that are identified as options within pay-for-performance pay plans or systems. Consequently, the practices or policies recommended for the design, implementation, and administration of pay-for-performance plans/systems in general will have to suffice as a surrogate for "best practices" regarding bonus pay.

**Performance Pay Practices in the Private Sector**

Although it has been reported that nearly all private sector

[10] This definition is taken nearly verbatim from Title 5, Code of Federal Regulations (CFR), 9901.304 - Definitions, and is the definition used for federal government employment pay administration.

[11] The staff's search for "best practices" regarding bonus pay for public employees began with a inquiry to the National Conference of State Legislatures (NCSL). A staff contact at NCSL, Brian Weberg, conducted his own search, which included an inquiry to NCSL's "human resources" contacts in all 50 states. The HR contact from Utah was the only response Mr. Weberg received from the states. Staff's internet searches were only slightly more successful, identifying a guide for architectural/engineering firms and a series of reports produced by, respectively, the General Accountability Office (GAO) and the Congressional Research Service (CRS), on various "pay-for-performance" initiatives undertaken in the federal civil service. The internet searches also provided links to various sites discussing "pay-for-performance" process and practice in the private sector, primarily for entities involved in manufacturing, sales, or finance. None of the sites referenced focused specifically on bonus pay, *per se*. Staff also e-mailed various private consulting firms seeking their notions of best practices regarding bonus pay for public employees, but received only one response. Perhaps tellingly, the sole response staff received stated simply, "Sorry, ... I don't [have] such data for you. Unfortunately, the words 'bonus' and 'government employee' are not usually found together." (E-mail from Mark Lipis, *Lipis Consulting*, Feb. 17, 2010.)

organizations appraise employee performance,[12] it is increasingly the case that employee performance is tied directly to compensation, including bonus pay.[13] For good or ill, there doesn't seem to be much literature (not counting news reports) on the subject, nor apparently has much empirical research been performed. However, in 2005, the consulting firm of Zweig-White researched, wrote, and published the *A/E Incentive Compensation Cookbook* (primarily for architecture/engineering firms) asserting that the book, "...will be a valuable resource for both firm leaders looking to create an incentive compensation program from scratch and for firm leaders who are looking to revise or expand their current incentive compensation program". [14]

Zweig-White noted, importantly, that increases in base salaries in 2006, i.e., before determining any form of incentive pay, were estimated at 3.6%.[15] The Zweig-White *Cookbook* goes on to say that, "Money alone can't bring in the top talent and keep key employees motivated, but it sure is a critical factor".[16]

The *Cookbook* devotes two chapters to the structure of pay-for-performance plans. One of those chapters focuses on the "elements" of an incentive compensation program and the other on "keys" in the recipe for a successful incentive compensation program. According to the Zweig-White chefs, there are nine "elements" and 15 "keys" to a successful program. The elements and keys identified by Zweig-White might be characterized as "best practices" and used to compare practices

[12] See, e.g., *Pay for Performance: Evaluating Performance Appraisal and Merit Pay*, Commission on Behavioral and Social Sciences and Education, 1991. "Between 93 and 99 percent of private-sector organizations use performance appraisal plans for their exempt and nonexempt salaried employees." at page 103.

[13] For certain professional occupations in the private sector, specifically architecture and engineering, bonus pay is widespread, with approximately 90% of A/E firms having some type of a bonus program. Among large, U.S. companies, about three-fourths have at least one type of variable pay plan. See *A/E Incentive Compensation Cookbook*, Zweig-White, Natick, MA, 2005; pp. 8, 53.

[14] *A/E Incentive Compensation Cookbook*, Zweig-White, Natick, MA, 2005, in the Foreword.

[15] Ibid., p. 9.

[16] Ibid.

and procedures regarding compensation, including bonus pay, among Montana state government employees.

**Ingredients of Successful Incentive Compensation Programs from the Zweig-White *Cookbook***

| Elements[17] | Keys[18] |
|---|---|
| Designate the project team | Don't rush to establish a plan |
| Establish the compensation philosophy and goal(s) | Establish benchmark for entity |
| Select the appropriate plan(s) | Meet or exceed medians |
| Identify eligible employees | Involve employees in program design |
| Establish performance metrics | Tie incentive compensation to strategic goals |
| Determine payout size | Keep the program as simple as possible |
| Determine payout timing/frequency | Establish clear, objective criteria for payout |
| Administer the plan | Set appropriate performance goals |
| Communicate | Consider frequent payouts |
| | Don't necessarily wait to be profitable to pay out bonuses |
| | Tie compensation to team or entity performance |
| | Reward top performers |
| | Communicate plan details to employees |
| | Practice open-book management |
| | Constantly review the plan |

17 Ibid., pp. 37-44.

18 Ibid., pp. 45-50.

Although the elements and keys to a successful compensation program as outlined in the *Cookbook* are aimed at architecture and engineering (A/E) firms, many and perhaps most of the elements and keys could apply equally well to any organization composed largely of professional practitioners, e.g., attorneys, accountants, actuaries, surveyors, doctors, et al., whose products or outputs are often intangible and qualitative rather than tangible or quantitative.

Among A/E firms researched by Zweig-White, 90% reported having a bonus plan and about two-thirds included the cost of bonuses in annual budgets.[19] Zweig-White also reported that 60% to 70% of engineers in private firms received bonuses in 2005, ranging from a median of $1,500 for newly-minted engineers to $8,000 for the most senior engineers.[20] As a percentage of salary, the average bonuses ranged from a low of 3.4% to a high of 8.8%.

Among all A/E firms in the industry, Zweig-White reported the median bonus in 2005 at $4,387 per employee, equivalent to 9.1% of total labor costs and 5.3% of total costs.[21] By comparison, a 2005 study by Hewitt Associates found that spending among U.S. companies on "variable pay" to salaried, exempt employees was 11.4% of compensation.[22]

Among the management teams of A/E firms surveyed, rather than among the engineers only, Zweig-White found similar participation levels, 76% in 2005, and a somewhat broader range of bonuses ($2,500 to $11,250; 3.4% to 9.5% of salary).

## Performance Pay Practices in the U.S. Civil Service

The General Accountability Office (GAO) has regularly examined and reported on various aspects of pay and compensation in the federal civil

[19] Ibid., p. 55.

[20] Ibid., pp. 55-56.

[21] Ibid., p. 56.

[22] Ibid. The *Cookbook* referred to the Hewitt Associates study, but did not provide a citation or other attribution.

service. The GAO's reports on pay-for-performance go back to at least the late-1970s following passage of the Civil Service Reform Act of 1978.[23]

More recently, i.e., within the past 10 years or so, several federal departments or agencies within departments either have begun to design and implement pay-for-performance systems or have been authorized to design and implement such systems. Some of those systems include provisions allowing "bonus" pay as part of total compensation and they also allow other types of enhancements to base pay. The GAO, in examining how various federal civil service pay systems were designed, implemented, and administered, took steps to identify "human capital" guidelines that underlie such plans. A passage from one of the relevant GAO reports characterized one of the steps taken during pay-for-performance design/review as follows:

> To further the discussion of pay reform, the U.S. Government Accountability Office (GAO), the U.S. Office of Personnel Management (OPM), the U.S. Merit Systems Protection Board (MSPB), the National Academy of Public Administration (NAPA), and the Partnership for Public Service convened a symposium on March 9, 2005, to discuss organizations' experiences with market-based and more performance-oriented pay systems. Representatives from public, private, and nonprofit organizations made presentations on the successes and challenges they experienced in designing and managing their market-based and more performance oriented pay systems, followed by an open discussion among key human capital stakeholders to learn from their experiences. The organizations described the tools and techniques they used for designing and implementing their pay systems in order to best meet their needs. Based on these organizations' experiences and following discussions, we identified several key themes that highlight the leadership and management strategies these organizations collectively considered in designing and managing market-based and more performance-oriented pay systems.[24, 25]

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[23] P.L. 95-454, 92 Stat. 111. Prior to July 2004, the GAO was know as the General Accounting -- not "Accountability" -- Office.

[24] *Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems,* GAO-05-832SP; Washington, DC, July 27, 2005.

[25] The representatives from public, private, and nonprofit organizations that made presentations at the *Symposium* on the successes and challenges they experienced in designing and managing their market-based and more performance-oriented pay systems included the Federal Deposit Insurance Corporation, Office of the Comptroller of the

The several key themes that highlight the leadership and management strategies the organizations identified as key -- perhaps "best practices" for the purposes of this report -- whenever public or private entities engage in designing and managing market-based and more performance-oriented pay systems include:

1. Focus on a set of values and objectives to guide the pay system.
2. Examine the value of employees' total compensation to remain competitive in the market.
3. Build in safeguards to enhance the transparency and ensure the fairness of pay decisions.
4. Devolve decision making on pay to appropriate levels.
5. Provide training on leadership, management, and interpersonal skills to facilitate effective communication.
6. Build consensus to gain ownership and acceptance for pay reforms.
7. Monitor and refine the implementation of the pay system.[26]

Whether or not the seven key themes represent "best practices" in the context of "bonus pay" may reside in the eye of the beholder. Regardless, they characterize performance-pay-system elements or core practices that public sector leaders and managers should consider.

In order to receive certification of their performance-pay systems for Senior Executive Service personnel (SES)[27] from the Office of Personnel Management (OPM) and the Office of Management and Budget (OMB), federal agencies are to design and administer performance appraisal systems that make meaningful distinctions based on relative performance through performance rating and resulting performance payouts (e.g., bonuses and pay adjustments). Specifically, agencies are to use multiple rating levels—four or five levels—and reward the highest-performing

Currency, Commonwealth of Virginia, IBM Corporation, and American Red Cross. (See Ibid., *Symposium*, at p. 2.)

[26] *Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems,* GAO-05-832SP; Washington, DC, July 27, 2005, p. 3.

[27] According to the Senior Executive Service website, the SES is a central coordinating point between the federal government's political leadership, which sets the political agenda, and the line workers who implement it. Members of the SES translate that political agenda into reality. http://www.opm.gov/ses/about_ses/faqs.asp .

executives with the highest ratings and largest pay adjustments and bonuses, among other things.[28]

The distinctions manifest in the payouts as illustrated by data reported by the GAO as compiled from federal agencies whose SES systems have been certified. (See Table 1, below.)

> The percentage of eligible executives that received bonuses or pay adjustments varied across the selected agencies for fiscal year 2007, as shown in [Table 1]. The percentage of eligible senior executives that received bonuses ranged from about 92 percent at DOD [Defense] to about 30 percent at USAID [U.S. Agency for International Development], with the average dollar amount ranging from $11,034 at State to about $17,917 at NRC [Nuclear Regulatory Commission]. For pay adjustments, all eligible executives at State received pay adjustments, while about 88 percent of eligible executives at DOE [Energy] received adjustments, with the average dollar amount ranging from about $5,414 at NRC to about $6,243 at DOE. As a point of comparison, about 67 percent of career SES members received bonuses with an average dollar amount of $13,292 for fiscal year 2006, according to governmentwide data reported by OPM [Office of Personnel Management].[29]

**Table 1. Percentage of Eligible Senior Executives Who Received Bonuses or Pay Adjustments and the Average Amounts at the Selected Agencies for the Fiscal Year 007 Appraisal Cycle**

| | Bonuses | | Pay Adjustments | |
|---|---|---|---|---|
| **Agency** | **Percentage that received bonus** | **Average amount of bonus** | **Percentage that received pay adjustment** | **Average amount of adjustment** |
| Defense | 92 | $13,934 | 95 | $5,739 |
| Energy | 82 | 14,116 | 88 | 6,243 |
| NRC | 87 | 17,917 | 95 | 5,414 |
| State | 55 | 11,034 | 100 | 6,148 |
| Treasury | 77 | 16,074 | 93 | 6,120 |
| USAID | 30 | 11,083 | 90 | 6,227 |

NRC is the Nuclear Regulatory Commission

USAID is the U.S. Agency for International Development

*Source*: GAO-08-1019T, Table 2, from GAO analysis of agency data.

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28 See *Human Capital: Selected Agencies Have Implemented Key Features of Their Senior Executive Performance-Based Pay Systems, but Refinements Are Needed*; Statement of J. Christopher Mihm, Managing Director Strategic Issues, GAO, July 22, 2008, p. 8.

29 See Ibid., *Human Capital*, p.13. As used in the Statement, a "bonus" is a cash award and a "pay adjustment" is an increase in base pay. (See p. 3 of the Statement.)

A broader pay-for-performance system, the National Security Personal System or NSPS, implemented within the Department of Defense (DoD) provides additional perspective on federal pay-for-performance plans. Authorized in 2003,[30] the NSPS was designed to cover some 700,000 federal civilian employees within the DoD and was based on the same seven key themes critical to pay-for-performance systems identified previously. The system was rolled out in "spirals" beginning in 2005 and, even before any personnel were transferred from the General Schedule (GS) to NSPS, ran into problems with its design, implementation, administration, and coverage.

Setting aside the growing pains endured as the NSPS was rolled out, a recent report[31] illustrates the effects of the System's implementation for the DoD employees paid under the Plan. Interpreting the numbers in Table 2, DoD employees covered by the NSPS received in 2009 a general salary increase of 1.74% of base salary.[32] The general salary increase is a permanent increase in base pay and reflects the general change in wages and salaries the previous year. It is a statutory increase and occurs automatically each year.

**Table 2. NSPS Salary Increase and Bonus Results - January 2009**

| | |
|---|---|
| Average Performance Salary Increase | 3.67% |
| General Salary Increase | 1.74% |
| Average Local Market Supplement Increase | 1.00% |
| **Total Average Salary Increase** | **6.41%** |
| Average Bonus | 1.94% |
| **Total Average Salary Increase + Bonus** | **8.35%** |

30 Pub. L. No. 108-136; National Defense Authorization Act for Fiscal Year 2004.

31 See "2009 Payouts Complete for NSPS Employees" on the *NSPS Website*; http://www.cpms.osd.mil/nsps/2009payouts.html .

32 Ibid., "2009 Payouts Complete for NSPS Employees" . Employees that received the lowest rating of 1, Unacceptable, (0.3% of employees) did not receive the general salary increase and those that received a rating of 2, Fair, (1.3% of employees), received only 1/2 of the increase.

The average pay increase *for performance* was 3.67% of base salary and ranged from a low of 2.23% for an employee who rated at the lower end of the "Valued Performer" rating, i.e., the middle rating of the NSPS 5-level rating system, to a high of 11.15% for those employees at the higher end of the "Role Model" rating, i.e., the highest rating available in the NSPS. An individual employee's performance pay is divided between a salary adjustment to base pay, which is a permanent increase, and a bonus payment that is based on base salary but is a one-time event. The amounts that are the adjustment to base and the one-time bonus vary for each employee and are based on the supervisor's and the reviewers' discretion.[33, 34]

## Performance Pay Practices in State of Montana Civil Service

Statutory Guidance

The Legislature has provided the Executive Branch broad authority and flexibility to establish, implement, and administer compensation systems within the Executive Branch.[35] The statutory authority is generally provided in sections 2-18-301 through 2-18-304, MCA. Section 2-18-301, MCA, describes the Legislature's philosophy:

> **2-18-301. Intent of part -- rules.** (1) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104, be based, in part, on an analysis of the labor market as provided by the department in a biennial salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

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[33] An employee who is at the maximum pay for his/her pay band would receive the entire performance pay amount as a bonus.

[34] Congress repealed the NSPS by passing the 2010 National Defense Authorization Act. (H.R. 2647--111th Congress.) President Obama signed the Act on October 28, 2009.

[35] Respecting the separation of powers, statutes limit the Executive's authority to employees in the Executive Branch. Statutory guidelines regarding compensation of employees of the Judicial and Legislative Branches are provided in the statutes governing each of those branches. See 3-1-702, MCA, regarding the Judicial Branch and 5-11-105, MCA, regarding the Legislative Branch.

(2) Pay adjustments, if any, provided for in 2-18-303 supersede any other plan or systems established through collective bargaining after the adjournment of the legislature.

(3) Total funds required to implement the pay increases, if any, provided for in 2-18-303 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the legislature.

(4) The department shall administer the pay program established by the legislature on the basis of competency, internal equity, and competitiveness to external labor markets when fiscally able.

(5) The broadband pay plan must consist of nine pay bands. Each pay band must contain a salary range with a minimum salary and a maximum salary.

(6) Based on the biennial salary survey, the department shall:

(a) identify current market rates for all occupations;

(b) establish salary ranges for each pay band; and

(c) recommend competitive pay zones.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system. (*Emphasis added.)*

Administrative Guidance

The DoA has executed its statutory charge in section 2-18-301, MCA, by adopting operational rules governing the broadband pay plan.[36] As written, the rules require each agency to "design, implement, and administer written pay rules", that:

- must be fiscally responsible, actively managed, and consistent with the agency's mission and objectives;
- identify procedures for implementing all aspects of pay addressed in the DoA's policy; and
- must be filed with the Department.[37]

[36] *Montana Operations Manual*, "Broadband Pay Plan Policy", Policy No. 3-05-1, Department of Administration, State Human Resources Division, October 2009.

[37] Ibid., p. 1.

Within those three requirements, the DoA states that it's broadband pay policy rules "allow agencies to strategically link their compensation practices to the agency's mission". In addition, the DoA rules require that an agency's pay rules must consider four criteria:

1. job-related qualifications;
2. existing pay relationships within the agency and work unit,[38]
3. ability to pay; and
4. external competitiveness.[39]

The four criteria listed immediately above -- qualifications, relationships, ability, and competitiveness -- are primary drivers when an agency or work unit initially establishes the base pay for a position and the person accepting the position and again when an agency or work unit considers adjusting the pay for a position or for a specific person in a position.

After the agency or work unit establishes the base pay for a position and for the person taking or holding that position, there are several types of discretionary pay adjustments available to the agency or work unit. The DoA rules governing pay plan administration identify seven types of pay adjustments available to agencies or work units.[40] The seven types of adjustments specifically identified in the DoA rules are:

- Competency Adjustment
- Market Adjustment
- Performance Adjustment
- Results Adjustment
- Situational Adjustment
- Supervisory Adjustment
- Strategic Adjustment

[38] A "work unit" is a defined, administrative component within a department, such as a division, bureau, or section.

[39] Ibid., *Montana Operations Manual*, p. 1.

[40] Ibid., pp. 5-6.

In conjunction with the DoA rules, the DoA's State Human Resources Division (SHRD) has also published *A Manager's Guide to Implementing Broadband Pay Plan Rules in Montana State Government* (hereafter *Guide*).[41] In the *Guide*, the SHRD offers several basic tenets to state managers whenever they design or modify their agency pay plan rules.[42] The tenets are:

- Broadband pay plan rules must support, and not lead, agencies' missions, goals, and objectives.
- Any discretionary funds used for pay above the statutory pay raises should be strategically linked to the agencies' missions, goals, and objectives.

- Pay is an important communication tool. Agencies must communicate their pay goals to the affected managers and employees. To the extent affected employees are unionized, this communication must be delivered in a manner that meets state government's obligation to bargain in good faith.
- No single pay strategy is right for every state agency or work unit. Different work units, agencies, and bargaining units will require different strategies.
- All broadband pay plan rules must contain a means for measuring and recording their success in achieving the desired goals.

<u>Comparing Montana State Government Pay-for-Performance Compensation Practices to Broadly-Recognized, Pay-for-Performance Compensation "Best Practices</u>"

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[41] *A Manager's Guide to Implementing Broadband Pay Plan Rules in Montana State Government*, State Human Resources Division, Montana Department of Administration, December 2009.

[42] Ibid., p. 4.

Allowing the key themes cited by the GAO to represent broadly-recognized "best practices" allows the compensation practices laid out by Montana law, DoA rules, and departmental guidelines to be compared side by side, as requested by SAVA. The following table illustrates the practices side by side.

| **Broadly-Recognized, Pay-for Performance, Compensation "Best Practices"** | | **Goal Met in MT** | **Montana State Government Pay-for-Performance, Compensation Practices** |
|---|---|---|---|
| 1 | Focus on a set of values and objectives to guide the pay system. | Yes | Strategically link compensation practices to the agency's mission.[43] Broadband pay plan rules must support, and not lead, agencies' missions, goals, and objectives.[44] |
| 2 | Examine the value of employees' total compensation to remain competitive in the market. | Yes | Compensation plans for state employees [should] be based, in part, on an analysis of the labor market.[45] Pay covers only a small area of job satisfaction. Several other factors, including the nature of work, relationships, and opportunities, are key to retaining good employees.[46] |

[43] *Montana Operations Manual*, Policy 3-05-1, p. 1.

[44] *A Manager's Guide to Implementing Broadband Pay Plan Rules in Montana State Government*, State Human Resources Division, Montana Department of Administration, December 2009, p. 4.

[45] Section 2-18-301, MCA. Other provisions of Title 2, chapter 18, MCA, address other components of Montana state employee compensation, including health insurance, longevity pay, annual leave, sick leave, etc. Title 19, MCA, provides for several retirement systems in which state employees participate and that comprise a portion of total compensation.

[46] *A Manager's Guide*, p. 4.

| Broadly-Recognized, Pay-for Performance, Compensation "Best Practices" | | Goal Met in MT | Montana State Government Pay-for-Performance, Compensation Practices |
|---|---|---|---|
| 3 | Build in safeguards to enhance the transparency and ensure the fairness of pay decisions. | Yes | The DoA shall administer the pay program established by the legislature.[47] Pay is an important communication tool. Agencies must communicate their pay goals to the affected managers and employees.[48] Each agency's plan(s) must be filed with the DoA.[49] |
| 4 | Devolve decision making on pay to appropriate levels. | Yes | No single pay strategy is right for every state agency or work unit. Different work units, agencies, and bargaining units will require different strategies.[50] |
| 5 | Provide training on leadership, management, and interpersonal skills to facilitate effective communication. | Yes | The Professional Development Center offers training in leadership, management, and interpersonal skills.[51] |

[47] Section 2-18-301, MCA.

[48] *A Manager's Guide*, p. 4.

[49] *Montana Operations Manual*, Policy 3-05-1.

[50] Ibid., *Guide.*

[51] Ibid. pp. 4-5. See also the training opportunities generally offered through the Professional Development Center, available at http://pdc.mt.gov/. The PDC is a bureau of the State Human Resources Division, Montana Department of Administration.

| Broadly-Recognized, Pay-for Performance, Compensation "Best Practices" | | Goal Met in MT | Montana State Government Pay-for-Performance, Compensation Practices |
|---|---|---|---|
| 6 | Build consensus to gain ownership and acceptance for pay reforms. | Yes | Communication must be delivered in a manner that meets state government's obligation to bargain in good faith.[52] The importance of thoroughly communicating the agency's pay rules cannot be overstated.[53] Open pay practices can increase trust, employees' perceptions of fairness, and their understanding of the agency's goals and objectives.[54] |
| 7 | Monitor and refine the implementation of the pay system. | Yes | All agency broadband pay rules must contain a means for measuring and recording the agency's success in achieving its desired goals. Such metrics allow the agency to monitor the effectiveness of a particular approach. [M]anagers can adjust their approach to better ensure achievement of their organizational goals and objectives.[55] |

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52 Ibid., p. 4.

53 Ibid., p. 18. The *Guide* includes an entire section, three pages of text, addressing the importance of communication between work unit managers and workers, in both directions. See pp. 18-21 of the *Guide.*

54 Ibid., p. 19.

55 Ibid., pp. 13-14.

Individual Agency Practices

The rules adopted by the DoA to guide individual agencies[56] in implementing the pay plan pursuant to section 2-18-301, MCA, including pay-for-performance systems, are not particularly specific or controlling. To paraphrase a line from a popular movie, the DoA rules are "...more what you'd call 'guidelines' than actual rules".[57] As noted in the *Guide*:

> The state's broadband pay plan is not a market, competency, or performance pay plan. It's an enterprise-wide plan that allows state agencies the flexibility to develop their own pay plan rules using any combination of market, competencies, or performance within broad statutory and policy parameters and authorized funding levels. The system allows state agencies to strategically link their own pay rules to their unique missions and more quickly adapt pay practices to changing demographics and labor markets.[58]

State agencies that reported they have adopted pay rules for in-house use have exercised the flexibility noted in the *Guide*.[59] While some agencies' pay plans are fairly explicit in the ways in which the respective agency's plan(s) will be administered, many agencies' plans more or less mirror the DoA rules (MOM 3-05-1) and are, therefore, general rather than specific.

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[56] The term "agency" as used here includes a department -- Department of Corrections, Department of Transportation, etc. -- or a work unit within a department and any entity that is attached to a department for administrative purposes only -- Montana Historical Society, Montana State Library, Teachers' Retirement System, State Tax Appeal Board, etc..

[57] *Pirates of the Caribbean: The Curse of the Black Pearl*, dialog spoken by Captain Barbosa, Walt Disney Pictures, 2003.

[58] Ibid., *Guide*, p. 3.

[59] In June 2009, SAVA staff solicited from each department within the Executive Branch and from numerous Executive Branch entities attached to the agencies for administrative purposes only a copy of the department's or entity's pay plan rules or policies. Staff also solicited similar information from the Judiciary and the Legislative Branches. In total, SAVA staff sent inquires to over 70 individuals, some of whom are/were employed by the same department or entity. Twenty-six departments or attached entities responded to the staff request. The Judicial Branch and most of the Legislative Branch also responded. It may be, at this writing some 14 months later, that additional entities have since then adopted pay plan rules and filed them with the DoA.

The *Guide* identifies eight options in the context of state employee pay, but notes that other options exist as well. Six of the options address an employee's base pay, while the other two address variable pay.[60]

| **Base Pay Options** | **Variable Pay Options** |
|---|---|
| Market pay | Lump-sum performance pay or award |
| Competency pay | Goal sharing |
| Performance pay | |
| Career ladder | |
| Strategic pay | |
| Situational pay | |

It is perhaps notable that some agencies have opted to implement some of the base pay options identified by the DoA rules as variable pay options in their own agency's pay plan. Other variations exist as well. Purely as examples:

- the **Board of Public Education** administers competency pay and results pay as types of variable pay. The Board's pay plan also mentions situational pay and strategic pay as options, but is silent on how the Board implements either of those options, i.e., base or variable. The Board's pay plan also identifies and defines "discretionary pay" and "market pay", but otherwise does not discuss either of those options.[61]
- the **Department of Military Affairs** (DMA) pay plan identifies and defines base pay, competency-based pay, downgrade, market-based pay, upgrade, results-based pay, pay progression, situational pay, and strategic pay. The DMA rules also discuss statutory pay increases and longevity pay increases, and "retention difficulties" (outside the confines of strategic or situational pay). DMA does not distinguish between which types of pay or pay increases are basic and which are variable, nor are the rules explicit as to how any of the types of pay or pay increases are

[60] Ibid., *Guide*, pp. 8-13. The *Guide* also refers to the variable pay options as "Results pay".

[61] *Pay Plan Policy and Provisions*, Board of Public Education; adopted August 2007, revised December 2007.

determined (by an employee or supervisor) or the dollar or percentage limits of any particular increase (other than the cap provided by the maximum salary for the position).[62]

- the **Department of Agriculture's** pay plan discusses strategic/situational pay, promotions, and within band pay adjustments, which imply changes to base pay. The pay plan also contains a sheet titled, "Discretionary Funds Distribution Profile" that appears to be a mechanism used to make pay decisions based on performance. However, the Profile does not indicate whether the distributions of discretionary funds are changes to base pay or are a form of variable pay.[63]
- the **Board of Investment's** (BOI) pay plan is bifurcated, with the Board's exempt staff subject to one plan, *Montana Board of Investments Exempt Staff Pay Plan*,[64] and the nonexempt staff subject to a different plan.[65] For the exempt staff, compensation is composed of base pay plus, possibly, compensation for: (1) individual performance; (2) professional credentials; (3) experience and skill; and (4) fund performance. The plan also allows the Board to make other adjustments[66] using other procedures (that aren't identified in the plan). The plan indicates that the pay component for professional credentials is a permanent addition to base pay, but does not indicate a dollar amount or percentage amount for any particular credential earned. The pay components that reflect "performance", "experience and skill", and "fund performance" are all temporary in nature, i.e., they are each assessed annually. The performance factor is the main driver of an employee's base pay and is determined annually by the employee's

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[62] *Broadband Guidelines for Implementing Pay Plan 20*, Montana Department of Military Affairs, DMA Policy 3-05-1, March 15, 2007. The *Rules* provide no guidance on how the Discretionary Funds Distribution Profile is used or where discretionary come from.

[63] *Pay Plan Rules and Provisions*, Department of Agriculture, Rev. Date: 06-27-07.

[64] *Montana Board of Investments Exempt Staff Pay Plan*, Montana Board of Investments, Rev. Nov. 13, 2008.

[65] The BOI's nonexempt staff is subject to the Department of Administration's pay plan, i.e., the plan that applies to the DoA's staff.

[66] The actual language in Board's pay plan for exempt staff states, "Under certain circumstances, the Board may at its discretion set salaries, grant raises, bonuses, or make other adjustments using other procedures." See *Montana Board of Investments Exempt Staff Pay Plan*, Nov. 13, 2008, p. 2.

supervisor or the Board. The experience and skill factor appears to be employed only at the time of initial hire, after which it is essentially replaced by the performance factor. The fund performance factor is clearly denoted as a discretionary "bonus" that may be awarded at the discretion of the Board. A bonus awarded for fund performance is capped at 20 percent of the employee's current salary.[67]

- the **Department of Public Health and Human Services'** (DPHHS) basic pay plan systematically applies to all applications of the pay system -- except for applications not specifically governed by the policy.[68] The basic pay plan covers about 20 percent of the DPHHS employees. The other 80% of the Department's employees are covered by one of at least five pay plan addenda:
  - *Memorandum of Agreement*: MPEA and Montana Department of Public Health and Human Services, Health Resources Division;
  - *Memorandum of Agreemen*t: MEA-MFT and Montana Department of Public Health and Human Services, Senior Long Term Care Division;
  - *Pay Plan Addendum*, November 7, 2007, Federation of Public Health and Human Services Employees Local 4573, MEA-MFT, AFL-CIO, and Montana Department of Public Health and Human Services, MEA-MFT -- Human and Community Services Division;
  - *Memorandum of Agreemen*t: MEA-MFT and Montana Department of Public Health and Human Services, Child and Family Services Division; or
  - *Memorandum of Agreement*: Federation of Public Health and Human Services Employees Local 4573, MEA-MFT, AFL-CIO and Montana Department of Public Health and Human Services, Disability Services Division, plus the four(?) addenda to the *Memorandum* specific to the Division.

  The five addenda to the main DPHHS pay plan and the four addenda to the Disability Services Division's addendum are all negotiated agreements with bargaining units that represent DPHHS employees. Some of the addenda include specific metrics on which specific enhancements to base pay are calculated as either permanent or one-time enhancements.

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[67] Ibid.

[68] *Personnel Policies and Procedures*, Department of Public Health and Human Services, Human Resource Policy #270, Rev. March 2003, p. 130-131.

The five examples outlined immediately above show that individual agencies are moving forward in implementing the broadband pay plan pursuant to section 2-18-301, MCA, and MOM Policy 05-0301 and illustrate some of the differences in the ways in which five entities administer compensation for their respective agency's employees. The DPHHS example also illustrates that employees within a single agency are compensated under different pay plans and that employees within a single division can operate under different procedures.

Recognizing that various departments have disparate divisions whose employees perform considerably different functions and may have groups of employees who are represented by different bargaining units, it is likely that the five examples outlined previously are not unusual. Rather, each entity that has adopted a pay plan for it's employees has adopted provisions and procedures distinct to its employees or particular groups of its employees. Consequently, if the provisions and procedures of an entity's pay plan parallel any other entity's pay plan, it may be as likely that the parallels are there by coincidence as by design.

Regardless of a state entity's pay plan design, finding the money to pay state employees any type of award for performance is a challenge due to budget constraints. Executive Branch agencies have typically been subject to a legislatively-imposed vacancy savings rate of 4% in recent budget cycles, which means that they are funded at only 96% of the amount needed to pay employees the same amount the employees are paid when appropriations are considered and set by the legislature. Thus, agency managers typically have to "find" 4% of personal services costs in order to not overspend their budget. For the current biennium (FY 2010-11) and reflecting the current budget/economic environment, the vacancy savings rate was generally increased to 7% for most agencies, making it difficult to simply maintain the *status quo*.

Looking back, the only time the Legislature appropriated money specifically for performance-based pay adjustments since converting the Executive Branch to the "broadband" pay plan in 2005 was 0.6% of salaries for fiscal years 2008 and 2009. Under the appropriation, the funds were to be allocated "...to each agency to distribute to its employees for reasons including but not limited to market progression, job performance, or employee competencies".[69] If spread evenly across the approximately 12,000 state employees, the amount appropriated would provide each employee a performance-based increase of about $347 in each of FY 2008 and 2009.

For comparative purposes to private sector and federal government pay-for-performance plans, if the Legislature were to budget 1% of state employee salaries for performance pay, the cost would be approximately $6.8 million, of which about $2.95 million would be state general funds.[70] If the Legislature appropriated 5% for performance pay, the total cost would approximate $34 million, of which nearly $15 million would be general fund.

While a 5% bonus may seem unthinkable in the current economic/budget environment, average bonuses of 5% would be less than one-half the amount reportedly paid as "variable pay" to private sector professional, salaried, exempt employees nationwide in 2005[71] or slightly more than one-half of the performance-pay increases seen in the federal government's program for the Senior Executive Service and about nine-tenths of the performance-pay increases for the National Security Personnel System's employees.[72]

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[69] Ch. 81, L. 2007; (HB 13, 2007). The statutory language appropriated funds based on "salaries", not "personal services". (Sections 11(2) and 22(2) of Ch. 81, L. 2007.) Distinguishing "salaries" from "personal services" is important because any increase in a "salary" has a ripple effect in the cost of employee benefits, e.g., retirement contributions, Social Security tax, Medicare tax, worker compensation insurance, unemployment insurance, etc. On average, salary alone comprises about 70% of personal services costs; considerably less than 70% for low-paid employees, but more than 70% for high-paid employees.

[70] Derived from data provided by the Montana Legislative Fiscal Division staff. The figures include the costs that would "ripple" through to, e.g., retirement contributions; Social Security tax; Medicare tax; workers' compensation insurance; unemployment compensation insurance; etc.

[71] See *A/E Incentive Compensation Cookbook*, Zweig-White, Natick, MA, 2005, p. 56. The *Cookbook* referred to the Hewitt Associates study, but did not provide a citation or other attribution.

[72] See Tables 1 and 2, on pages 14 and 15. The percentage amounts referenced here for the federal employee programs do not include federal general increases to base pay (1.74%) or for location pay (1.0%).

Implementation Caveat

An explicit or implicit provision in each state agency's pay rules reviewed is a caveat that all pay decisions, whether permanent enhancements to base pay or one-time only enhancements in the form of a "bonus", depend on the availability of funding within the entity considering the decision. Underlying this constant is the statutory language that provides for pay plan administration that involves increasing compensation only when the employing entity is "fiscally able".[73]

On its face, a requirement for "fiscal ability" appears eminently reasonable and nondiscriminatory. On closer examination, however, some entities are likely to have fiscal ability that other entities don't have. An entity that is wholly or largely funded with federal special revenue may have greater or lesser fiscal ability than an entity that is funded with state special revenue or, especially, state general fund revenue. The same may hold true for an entity funded wholly or largely with proprietary funds rather than funds from other sources, particularly state general fund.

The manifestations of differences in fiscal ability may not be readily apparent at this time because many entities' pay plans have not had much time to take effect. By the end of the 2012-13 biennium, however, and perhaps even by the end of the 2010-11 biennium, some implications may become apparent. Disparities in specific or overall personal services expenditures may start to appear between agencies that have similar positions or personnel but that are funded from different sources of revenue. Disparities may also appear among entities supported by different revenue sources, regardless of the positions or personnel within the entities. Of course it may be that no disparities appear to exist, which information should also be valuable.

## SUMMARY OF RESEARCH IN BEST PRACTICES FOR BONUS PAY

In undertaking HJR 35, the SAVA members focused, in part, on "best practices" regarding bonus pay and how Montana's practices compare.

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[73] See section 2-18-301(4), MCA..

Unfortunately, there doesn't seem to be a list of best practices for bonus pay that is more or less universally recognized.  Rather, the registries of practices and processes that do exist in the context of employee compensation address pay-for-performance compensation systems in general.  In that regard, many of Montana's practices and procedures as prescribed in agency rules reflect many of the best practices recognized in the private sector and within the federal government.

Notable within the pay-for-performance systems in the private sector is that the average amount of spending among U.S. companies on "variable pay" to salaried, exempt employees in 2005 was 11.4% of compensation.[74]  Similarly, within the federal civilian workforce where pay-for-performance has been implemented, performance pay is a significant portion of total pay and is in addition to at least two types of market-driven, statutory, automatic pay increases that federal employees receive annually.[75]

As directed by the SAVA, this section of the committee's HJR 35 study has attempted to focus on the extent to which state pay policies and practices regarding "bonus pay" measure up against the "best practices" in the employee-compensation world.  To the minimal extent that "best practices" regarding bonus pay can be identified, the state's policies and practices largely contain or model them.  That said, this part of the study and of this report was not intended to determine whether or not the state's policies and practices have been and are being implemented as written. Consequently, the state's use of bonus pay and other options that agencies may use as pay-for-performance components of total compensation have been given only passing mention.

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[74] See *A/E Incentive Compensation Cookbook*, Zweig-White, Natick, MA, 2005, p. 56.  The *Cookbook* refers to the Hewitt Associates study, but does not provide a citation or other attribution.

[75] See *Human Capital: Selected Agencies Have Implemented Key Features of Their Senior Executive  Performance-Based Pay Systems, but Refinements Are Needed*; Statement of J. Christopher Mihm, Managing Director Strategic Issues, GAO, July 22, 2008, and *Pay-for-Performance: Lessons from the National Security Personnel System*, Wendy R. Ginsberg, December 18, 2009

FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

Among federal civilian employees eligible for "pay for performance", the average amounts received annually as "bonus pay" by employees compensated under the federal Senior Executive Service pay plan in the $11,000 to $18,000 range, (plus $5,000 to $6,000 in adjustment to base pay annually).[76] Employees covered under the National Security Personnel System received average annual increases of approximately 5.67% to base pay, some of which increases were permanent (and all of which were in addition to a nearly 2% permanent, inflationary adjustment and a 1% locality adjustment).

Comparatively, a thin slice of private sector professionals, engineers and architects specifically, were treated not dissimilarly to federal civilian employees. Private sector engineers and architects received bonuses in 2005 ranging from a median of $1,500 for newly-minted engineers to $8,000 for the most senior engineers.[77] As a percentage of salary, the average bonuses ranged from a low of 3.4% to a high of 8.8%.

Among all A/E firms in the industry, consulting firm Zweig-White reported the median bonus in 2005 at $4,387 per employee, equivalent to 9.1% of total labor costs and 5.3% of total costs.[78] By comparison, a 2005 study by Hewitt Associates, another human capital consultant, found that spending among U.S. companies on "variable pay" to salaried, exempt employees was 11.4% of compensation.[79]

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[76] Base pay for individuals holding positions covered by the Senior Executive Service range from about $130,000 to about $200,000 annually. See, e.g., *Human Capital: Selected Agencies Have Implemented Key Features of Their Senior Executive Performance-Based Pay Systems, but Refinements Are Needed*; Statement of J. Christopher Mihm, Managing Director Strategic Issues, GAO, July 22, 2008.

[77] *A/E Incentive Compensation Cookbook*, Zweig-White, Natick, MA, 2005.

[78] Ibid., p. 56.

[79] Ibid. The *Cookbook* referred to the Hewitt Associates study, but did not provide a citation or other attribution.

**DRAFT** ***SAVA Findings***

The Committee makes the following findings:

(1) Current law and written state pay policies are consistent with bonus pay "best practices", to the extent they exist.

(2) Although bonus pay as part of compensation in general among exempt (professional), civilian employees of the federal government and among salaried, exempt (professional) private sector employees has historically been a significant component of total compensation, bonus pay among Montana's state employees is very difficult to demonstrate, tract, or analyze.

The SAVA members make no recommendations regarding appropriate amounts or percentage adjustments to the base pay of state employees, either in terms of "pay for performance" in general or specifically in terms of "bonus pay".

## PART 3: ADDITIONAL RELEVANT INFORMATION OF INTEREST TO THE COMMITTEE

As the SAVA members gained knowledge, insight, and understanding on the theory and practice of bonus pay, they also considered matters and asked questions not specifically mentioned in HJR 35.

This Part of the report relates relevant information provided to the Committee in regard to those matters and questions.

### Issue 1: Salary Spiking

*Introduction*

"Salary spiking" is generally recognized as a substantial increase in the wages or salary of an employee shortly before retiring, the primary purpose of which increase is to increase the employee's pension benefit. For example, a PERS-covered employee who receives annual pay increases of 10% in his or her last 3 years of employment would stand to gain over 20% in pension benefits compared to what he or she would have earned as a pension based on his or her salary before the 10% increases.

One way that salary spikes can occur is through bonus pay, but it more commonly occurs through a promotion, a job reclassification, overtime hours worked, or other mechanisms that are less visible or at least less suspect than a significant amount of bonus pay at the end of an employee's career.

The effects of salary spiking on a pension plan can be substantial if the practice is widespread.

Having become aware of the implications of salary spiking to Montana's public pension systems, the SAVA asked staff to determine if salary spiking occurs within Montana state government

To make a determination, staff was constructed the following guidelines:

1. an increase of at least double the statutorily authorized increase in annual pay is a "substantial increase"; and
2. a substantial increase in an employee's wages or salary over the 5 years preceding an employee's retirement could be an indication of salary spiking (but would not necessarily be evidence of spiking).

Under the guidelines provided above, the short answer is probably "yes". That said, spiking probably occurs only rarely and, when it does occur, it is difficult to document.

*Background*

SAVA staff requested from the Public Employees' Retirement Administration (PERA) a list of all employees within the PERA's purview who retired in 2008 or 2009 and the annual wage/salary history of each of those retirees since 2004. Staff asked that the wage/salary information be identified only by a number assigned to each employee: (1) to maximize employee/retiree anonymity and, therefore, privacy; and (2) in case there was a need to follow up on the information provided, e.g., checking the accuracy of the data.

The PERA staff responded by providing the requested information.

*Caveats*

Reasons for changes in pay: SAVA staff could not discern from the data provided by PERA the reasons why the wages or salary of an employee were increased (or decreased).[80] Consequently, there is no way to determine from the data if the purpose of a salary increase, including a "spike", was for the primary purpose of increasing the employee-retiree's pension benefit or for another reason, e.g., promotion, reclassification, internal pay equity, external pay equity (competitiveness), market movement (salary survey), etc.[81]

Overtime or termination pay: The wage or salary data reported by PERA may include overtime pay or termination pay, i.e., the payout of unused leave balances, but such a determination cannot be made from the data only. If the annual wages or salary reported in the PERA data for an employee-retiree includes overtime pay or termination pay, the annual wage/salary data could lead to a wrong conclusion about pay increases or final pay.

Broadband pay plan: The broadband pay plan was legislatively authorized first on a trial basis by the 56th Legislature (1999)[82] and expanded by the 57th Legislature (2001).[83] The 60th Legislature (2007) made broadband the standard for state government.[84] As a result, agencies have been implementing the broadband pay plan gradually from 1999 through 2009.

The general implementation of broadband included, among other things, updating position descriptions, conducting salary surveys and implementing their findings, identifying the pay band and pay range for

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[80] In some years, statutory changes required an employee's wage or salary to be increased, and those changes can reasonably be assumed to be included in the change to an employee's wage or salary.

[81] It may be possible to trace the stated reasons for changes in wages or salary through personnel records, but it is not possible to determine reasons from the PERA data. It is also highly unlikely that any personnel records would state as the reason for a wage/salary, essentially, "to increase [NAME} pension benefit".

[82] Ch. 558, L. 1999.

[83] Ch. 533, L. 2001.

[84] Ch. 81, L. 2007.

each position, and placing individual employees at their appropriate places within their respective pay ranges. The implementation of broadband, alone, affected the base pay of many state employees from 2001 through 2006 and, beginning in 2007, nearly all other state employees unaffected by the initial pilot projects.

Disability Retirements: Each of the PERA-administered systems provides for the retirement of a vested member on the basis of a disability incurred by the member. The number of disability retirements is relatively small compared to the total number of retirements, and are mentioned here as a caveat because, in the aggregate, such retirements could affect averages, standard deviations, medians, and other statistical measures. A member's disability that is the basis for a disability retirement should have no impact on a member's salary, but even if it did, the effect of the change in salary would be recognizable for pension-determination purposes only after a period of time that would affect the final average salary. Thus, a salary spike in the context of a disability retirement would virtually have to anticipate the disability--which is not impossible, but is unlikely.

*Methods and Findings*

Annual Number of Retirees

The data that PERA provided was composed of the annual pay of all individuals who retired from a PERA-administered retirement plan/system in either 2008 or 2009. Table 3 shows the number of retirees from each system by year.

**Table 3: Number of retirements by retirement system and year**

| | **Number of Retirements in:** | |
|---|---|---|
| **Retirement Plan or System** | **2008** | **2009** |
| **PERS** | 790 | 759 |
| **Judges (JRS)** | 1 | 2 |
| **Game Wardens' and Peace Officers (GWPORS)** | 8 | 6 |
| **Highway Patrol Officers (HPORS)** | 3 | 8 |

**Table 3: (continued)**

| Retirement Plan or System | Number of Retirements in: 2008 | 2009 |
|---|---|---|
| | | |
| **Sheriffs' (SRS)** | 14 | 14 |
| **Municipal Police Officers (MPORS)** | 32 | 16 |
| **Firefighters' Unified (FURS)** | 21 | 13 |

*Indications of Salary Spiking*

Based on the guidelines stated previously -- an increase of at least double the statutorily authorized increase in annual pay over the 5 years preceding an employee's retirement is a "substantial increase" and could be an indication of salary spiking -- the data suggest that some salary spiking may have occurred among PERS-covered employees who retired in 2008 or 2009. The basis of that statement rests in the legislatively-sanctioned pay increases specifically provided for in the legislatures' pay plan bills and the findings from examining the base data.

*Statutory Pay Increases*

Examining the pay plan bills since the 58th Legislature (2003) reveals varying statutorily-authorized pay increases,[85] as follows:

- FY 2004: no pay increase
- CY 2005: $0.25 per hour. (Equates to 2% at $25,000; 1% at $50,000.)
- FY 2006: 3.5% or $1,005, whichever is greater. The threshold at which "greater" applied was an annual salary of $28,714. At $25,000, the increase was 4.02%; at $20,000, 5.03%.
- FY 2007: 4% or $1,188, whichever is greater. The threshold at which "greater" applied was an annual salary of $29,700. At $25,000, the increase was 4.75%; at $20,000, 5.94%.

[85] See Ch. 552, L. 2003 (HB 13); Ch. 6, L. 2005 (HB 447); Ch. 81, L. 2007 (HB 13).

- FY 2008 and 2009: 3.6% each year [86]
- FY 2010: no pay increase
- FY 2011: no pay increase.

Over the periods 2004-2007, 2004-2008, and 2004-2009, the cumulative effect of the statutory pay increases, including the effects of compounding,[87] were:

- 2004-2007: 9.25%
- 2004-2008: 13.19%
- 2004-2009: 17.26%.

Because there are legitimate reasons for pay increases, i.e., reasons other than "salary spiking" intended primarily to increase the pension amount, that could account for increases above the statutorily-required 9.25%, 13.19%, or 17.26% for the periods covering, respectively, 2004-07, 2004-08, and 2004-09, an initial threshold flagged a pay increase of more than double the statutorily-required increases as one to examine further. Subsequently, thresholds of a pay increase of more than triple and more than quadruple the statutorily-required increases were also flagged. Table 4 shows the percentages of employees who retired in either 2008 or 2009 that received increases above those thresholds.

**Table 4: Percentage of employees whose respective pay increases in years prior to retirement exceeded statutorily-required increases**

| Multiple of Statutory Increase Since 2004 | 2008 | 2009 |
|---|---|---|
| at least Double | 34% | 25% |
| at least Triple | 9% | 5% |
| at least Quadruple | 4% | 2% |

NOTE: The compounded statutory increase from 2004-2008 was 13.19%. Therefore, double was 26.38% triple was 39.56, and quadruple was 52.75%. For the 2004-2009 period, compounded statutory increases were 17.26% and, therefore, double was 34.53%, triple was 51.79%, and quadruple was 69.05%.

86 The required increase in base pay was 3%, with another 0.6% to be allocated, "...for reasons including but not limited to market progression, job performance, or employee competencies." (Sec. 11(2), Ch. 81, L. 2007.)

87 These percentages recognize the 25-cents-per-hour increase on January 1, 2005, as an increase of 1.5%, which would derive from an annual salary of $34,667. At lower salaries, the percentage increase would be larger, e.g., at $25,000, 2.08%, and at higher salaries, the percentage increase would be less, e.g., at $50,000, 1.04%.

*Apparent Spiking and Factors Possibly Distorting Significant Pay Increases*

At first blush, it might be startling that between one-quarter and one-third of employees who retired in 2008 or 2009 received salary increases totaling more than double the statutorily-required increases or that any retiring employee would receive more than quadruple the statutorily-required increases. Upon further examination, however, there are several factors that might explain how salary increases that were double, triple, or even quadruple the statutorily-based increases could have occurred for legitimate reasons.

Factor 1--Promotion, Job Change, or Reclassification: A person who is promoted from one position to another, more complex position should be expected to receive the salary for the new position as justified by the qualifications required by the position. The same logic might apply to a person who changed jobs, e.g., from a line worker to paraprofessional or professional position. In many or perhaps most cases, a promotion will be accompanied by a pay increase of about 10% above the person's pre-promotion salary. In instances of job changes, the increases could be even more than 10%.

A similar percentage change in annual pay could result from a position being reclassified from a lower level to a higher level.

Factor 2--Overtime Pay: Most PERS-covered employees are also covered by the federal Fair Labor Standards Act, which requires that an employee be paid at 1 1/2 his or her regular rate of pay for all hours worked in excess of 40 hours per week. That means that an employee who is paid for overtime will see an additional 1% increase in annual pay for every 14 hours of overtime worked. Thus, an overtime-eligible employee who works 70 hours of overtime would see an additional 5% in annual pay, although the employee's hourly rate of pay didn't change at all.[88]

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[88] For example, an employee who is paid $35,000 in year 1 for 2,080 hours of work (52 weeks at 40 hours per week) and who works 2,094 hours in year 2 would see an increase in annual pay of $350 or ~1%. If the same employee worked 2150 hours in year 2, he or she would see an increase in annual pay of $1,787 or ~5%.

Factor 3--Part-Time Employees: Working Additional Hours: There are a significant number of part-time employees in state government. There are times when a part-time employee may be asked to work more hours in one year than he or she worked in a previous year. Additional hours worked by a part-time employee can have a significant effect on the employee's annual pay. For example, an employee who regularly works "half time", 1,040 hours per year, would see a 0.1% increase in annual pay for each additional hour (over 1,040) worked in a year. Thus, working an additional 40 hours -- less than 1 hour per week -- in a year would represent an additional 4% in annual pay. The same employee working an additional 2 hours per week would see a 10% increase in annual pay, although the employee's hourly rate of pay didn't change at all.

Factor 4--Part-Time Employees: Converting to Full Time: It is not uncommon for a part-time employee to assume a full-time position, for reasons that can range from expanded workload to filling a vacancy. A part-time employee who works half-time and converts to full-time employment would see a minimum 100% increase in annual pay in his or her first year as a full-time employee, although the employee's hourly rate of pay didn't change at all.

Factor 5--Return to Work: There are PERS-covered employees who have had significant breaks in state service, i.e., they either are unemployed or are employed elsewhere between stints working for the state. When these employees are rehired by the state, their pay in year 1 will usually be for less than a full year. The shorter duration for which the returning employee is paid in year 1 will result in a higher percentage increase in annual pay in year 2. For example, an employee rehired into a position paying $35,000 annually on August 1 of year 1 would receive about $14,580 pay in year 1 (for the 5 months worked) and the full $35,000 in year two, which would result in an apparent increase in annual pay (from the state job) of about 58%. Had the person started the job on May 1 rather than August 1, the year-over-year increase in annual pay would be 33%, whereas if the same person had started the job November 1, the annual increase would show as 83% year-over-year. The apparent percentage increases measured on an annual basis are valid although the employee's hourly rate of pay didn't change at all, regardless of the day on which employment began.

Factor 6--Termination Pay: State employees earn annual leave and sick leave each pay period. Annual leave may be accrued to a level that equals twice the employee's annual leave earned. An employee whose annual leave balance exceeds twice his or her annual accrual of annual leave loses the excess leave.[89] Similarly, sick leave may be accrued during an employee's entire career, with no maximum accrual.[90]

When an employee terminates employment, such as by retiring, he or she is paid for all unused annual leave and for one-quarter of unused sick leave. Thus, an employee earning $35,000 who, at retirement, has 120 hours of unused annual leave and 120 hours of unused sick leave would receive, as termination pay, $2,524, composed of $2,019 for unused annual leave and $505 for unused sick leave.[91] With $2,524 in termination pay, the employee's annual pay would show an increase of 7.2% year-over-year, although the employee's hourly rate of pay didn't change at all.

Employees that do not earn overtime pay typically earn "compensatory time" for time worked in excess of 40 hours per week. At termination, these employees are paid for all of their unused compensatory time, the same as unused annual leave. In some cases, an employee may have accrued many hours of compensatory time that will, when paid out, show up as a sizable increase in annual pay, although again the employee's hourly rate of pay didn't change at all.

In an extreme, possible-but-unlikely example, an employee earning $35,000 annually may retire after 20 years of service having accrued 500 hours of annual leave, 1,500 hours of sick leave, and 400 hours of compensatory time. In total, the payout for the unused leaves could amount to $21,450. In such a case, the employee's annual pay would appear to increase from $35,000 in the year prior to retirement to $56,450

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[89] The head of the agency that employs a person who accrues more than twice the person's annual accrual of annual leave may grant an extension during which the person is required to "use or lose" excess annual leave.

[90] State employees earn 1 day per month of sick leave, which equates to ~3.69 hours per pay period. An employee who does not use any sick leave during his or her career of, e.g., 20 years, aside from being extremely fortunate, would accrue 1,920 hours of sick leave.

[91] These amounts are "gross" and would be reduced for state and federal income taxes, FICA, retirement contributions, etc.

in the year of retirement, giving the appearance of an increase of 61% and suggesting, perhaps, salary spiking. Again, however, the employee's hourly rate of pay didn't change.

Factor 7--Broadband Implementation: As mentioned previously, the state began experimenting with a "broadband" pay system about 10 years ago. The broadband pay system was extended to all classified state employees in 2007.[92] Although the broadband system is still not fully implemented, the initial effects on the annual pay of certain individuals and groups of employees have often been significant.

Moving employees to the broadband system included: (1) determining the "pay band" within which each occupation or category should be located; (2) determining, through a "salary survey", the entry, "market", and maximum rates of pay -- called the "competitive pay range" -- for each type or category of occupations covered by the system; and (3) determining at what rate of pay, within the competitive pay range, each individual employee should be paid under the employee's agency pay rules.[93]

At implementation of broadband, it was not uncommon for an employee to see a one-time increase in pay of 10% or more due solely to the results of the salary survey. For some occupations and individuals, the effects of a properly classified job, identifying the appropriate pay band, determining the market salary and the competitive pay zone for the occupation or employee, and placing the individual at the appropriate point within the pay zone had compounding effects that resulted in one-time pay increases of 10-15% or more.

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[92] Ch. 81, L. 2007 (HB 13). The list of "exempt" employees to whom the broadband system does not apply statutorily may be found at 2-18-103, MCA. However, the "exempt" employees may also be subject to a form of the broadband system if such a system is adopted and implemented under the authority of the agency for which the exempt employees work. For example, the employees of the Consolidated Legislative Branch, composed of the employees of the Senate, House of Representatives, Legislative Services Division, Legislative Audit Division, and Legislative Fiscal Division, are subject to the broadband system adopted by the Legislative Council pursuant to 5-11-105, MCA.

[93] Definitions for the terms in parentheses are found at 2-18-101, MCA. Perhaps most importantly, under the statute, "market salary means the median base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market."

*Indications of Spiking from a Different Perspective*

Table 4 and the narrative above discussed spiking from the perspective of the percentage change in an employee's annual pay over the several years preceding retirement relative to the statutorily-prescribed increase in pay over the same several years. However, "salary spiking" may also be viewed or defined as a substantial increase in pay between only the single year an employee retires and the year immediately prior to retirement. An increase in pay that could be interpreted as a "salary spike" if it occurred in the year of or year immediately prior to retirement may have occurred 2, 3, or 4 years prior to retirement.

Tables 5A through 5D show the percentages of retirees whose pay in the 1, 2, 3, and 4 years prior to retirement increased by at least 10%, 15%, 20%, and 25%.[94]

**Table 5A: Percentages of PERS-covered employees whose pay increased by certain amounts 4 years prior to retirement**

| From 4 years prior to retirement, employee received a pay increase of at least: | Retirement in 2009 |
|---|---|
| **10%** | 1% |
| **15%** | 1% |
| **20%** | 0% |
| **25%** | 0% |

NOTE: The statutory pay increase in 2005 was 25-cents/hour.

[94] Due to data limitations, i.e., annual pay rather than hourly pay, the situation commonly occurs where an employee may have retired, for example, in 2008, having worked less than a full year in 2008, In such situations, the percentage change in pay for "the year prior to retirement" represents the change in pay that occurred between 2006 and 2007 rather than between 2007 and 2008. The same logic applies to such employees for a pay increase 2-, 3-, or 4-years prior to retirement.

**Table 5B: Percentages of PERS-covered employees whose pay increased by certain amounts 3 years prior to retirement**

| From 3 years prior to retirement, employee received a pay increase of at least: | Retirement in 2008 | Retirement in 2009 |
|---|---|---|
| **10%** | 2% | 16% |
| **15%** | 1% | 9% |
| **20%** | 0% | 7% |
| **25%** | 0% | 6% |

NOTE: The statutory pay increase in CY 2006 was 4% and in CY 2007 was 3.6%.

**Table 5C: Percentages of PERS-covered employees whose pay increased by certain amounts 2 years prior to retirement**

| From 2 years prior to retirement, employee received a pay increase of at least: | Retirement in 2008 | Retirement in 2009 |
|---|---|---|
| **10%** | 13% | 24% |
| **15%** | 6% | 14% |
| **20%** | 4% | 8% |
| **25%** | 2% | 7% |

NOTE: The statutory pay increase in each of 2007 and 2008 was 3.6%. There was no statutory increase provided in 2009.

**Table 5D: Percentages of PERS-covered employees whose pay increased by certain amounts in the year of retirement**

| From the year prior to retirement, employee received a pay increase of at least: | Retirement in 2008 | Retirement in 2009 |
|---|---|---|
| **10%** | 13% | 24% |
| **15%** | 6% | 14% |
| **20%** | 4% | 8% |
| **25%** | 2% | 7% |

Note: There were 790 PERS retirements in 2008 and 759 in 2009. The statutory pay increase in 2008 was 3.6%. There was no statutory increase provided in 2009.

Caution should again be exercised when interpreting the data in Tables 5A through 5D in regard to the same seven "factors" mentioned as caveats when interpreting the data in Table 4, particularly Factor 6: Termination Pay . A substantial increase in pay in the year or years prior to retirement does not necessarily indicate a "salary spike" in the context of maximizing the pension benefit, but may simply represent a pay increase for reasons unrelated to boosting the pension benefit.

*Base Data*

The 5-year, base data on pay for employees of the PERB-governed retirement systems who retired in either 2008 or 2009 is provided in Appendix A. The base data appears in the first six columns for 2008 retirees and the first seven columns for 2009 retirees, except the rows showing "Total", "Average", or "*** Chng", which SAVA staff calculated but which are not be particularly useful.[95]

*Summary and Conclusion Regarding Salary Spiking Under Guidelines Established by SAVA Staff*

Data provided by the PERA showing the annual pay of state employees who retired from the PERB-covered retirement systems in 2008 or 2009 suggests that some salary spiking may occur within Montana state government. The notably weak and noncommittal term "may occur" is used in the preceding sentence only because there isn't a standard definition of what constitutes "salary spiking", including when the increase in pay occurs.

Nevertheless, the data show that a number of PERS-covered employees received seemingly outsized pay increases in the year of or year(s) prior to retirement, even under the caveats outlined in Factors 1 through 7 in the preceding narrative. Whether or not an increase in pay that was double, triple, or quadruple the statutorily-driven pay increases indicates salary spiking is for the reader to decide.

[95] These are the five lines following Retiree No. 790 in 2008 and following Retiree No. 759 in 2009.

*An Alternate Definition of Salary Spiking*

During the Committee's discussion of the staff's initial report on salary spiking,[96] SAVA member Sen. Joe Balyeat suggested a broader definition and argued that his broader definition would be a better gauge of salary spiking in PERS-covered or other public employment covered by a public retirement system. Sen. Balyeat's suggested definition is:

> A "salary spike" is any activity that drives up an employee-retiree's pension benefit to a level above the amount expected by the contributions from the employer and employee and the earnings on the contributions.

The difference between the staff's definition, i.e, the "guidelines" outlined on page XXX and Sen. Balyeat's definition points up a potential need for a clear definition of salary spiking if the legislature or either of the retirement boards chooses to monitor, measure, or limit salary spiking.

*Options for Legislative Consideration*

If the legislature wishes to propose legislation regarding salary spiking, the definition should address, at a minimum:

1. a dollar amount or percentage amount of change in pay above which salary spiking is indicated or limited; and
2. a time period during which the increase in pay occurs. (The committee could consider, for example, a rolling 3-year or 5-year period or a set period relative to the employee's retirement date.)

If the legislature is interested in only monitoring or measuring salary spiking, rather than limiting or banning the practice, the members may also wish to consider if a method should or even can be prescribed to determine if the intent of the "salary spike" was primarily to enhance the employee-retiree's pension benefit. One option for legislative consideration is to require the DoA to monitor changes in employee

[96] See Memorandum to Sen. Joe Tropila, Chairman, SAVA, from Dave Bohyer, June 18, 2010.

compensation, scrutinize the changes for potential salary spiking, and report its finding to the SAVA or to the 63rd Legislature.

To the extent that the Legislature is concerned that salary spiking is occurring, additional legislative investigation might be in order, e.g., determining the underlying reasons for the pay increases shown in the 2008-2009 base data for certain retirees.[97]

The Legislature may also wish to discuss options that, going forward, would at least monitor pay increases of retiring or retired PERS-covered employees or employee-retirees of other state retirement systems in terms of:

- seemingly outsized increases and the reason(s) given for the increases;
- departments, divisions, or other work units in which seemingly outsized increases occur too frequently (however that may be measured) or at questionable times (whenever those might be specified);
- the funding source(s) of the respective salaries of employees who receive seemingly outsized pay increases, i.e., is the pay of such employees funded with state general fund or with other types of funds (federal special, state special, proprietary, grant, etc.);
- potential legislation to limit any salary spiking that the Legislature believes may occur without such legislation.

The SAVA makes no findings or recommendations regarding salary spiking within the context of state employee compensation.

**Issue 2: Retirement Conditions Specific to Legislators**

*Introduction and Background*

During the SAVA members' discussions of salary spiking, an example was outlined whereby a legislator, having served perhaps 16 years combined in the House and Senate and who typically was paid about

[97] The staff of the Legislative Audit Division will be conducting a performance audit of the PERB- and TRS-governed retirement systems. As of this writing, the scope of the audit has not been set, nor has a tentative completion or publication date been set.

$9,000 during a session year[98] and considerably less in the non-session years, who is appointed to or competitively selected for a full-time position in state government would stand to benefit from an increased pension benefit.

In most cases the example would be true. It would be likely that a legislator who participated as a member of a state pension plan and who is subsequently employed in a position other than "legislator" and covered by the pension plan would receive a larger pension benefit than if the legislator-turned-employee had not accepted the nonlegislator position. The reasons for the larger pension would accrue to the probability that the nonlegislator position is paid at a higher rate than a legislator is paid, eventually resulting in a "higher average compensation" (HAC) than the HAC of a person earning pension membership service as a legislator only.

*Discussion*

Legislators are currently paid at the rate of $82.64 per day, i.e., the equivalent of $10.33 per hour for an 8-hour day or $21,486 annually.[99] Contributions made to the retirement plan of a participating legislator are based on that rate of pay and, absent other membership service at which the legislator is or was paid at a higher compensation, a legislator's pension benefit is based on that rate of pay when the (HAC) is determined.[100]

Specifically, a PERS-participating legislator retiring December 31, 2010, after having served a combined 16 years in the House and Senate and without earning membership service elsewhere would receive a pension benefit based on 16 years of service at the final average compensation of $21,486 annually (or $1,790 monthly). Using the standard formula for determining the pension benefit for a PERS

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[98] At the statutory rate of $82.64 per day ($10.33 per hour), a legislator would earn $7,437 for a 90-day session, plus and additional $82.64 for each day working on legislative committee business during the interim or while meeting in a special session.

[99] Section 5-2-301, MCA.

[100] A legislator's highest average compensation is calculated in the same way as any other employee of the same retirement system. For the PERS, HAC is the member's highest average monthly compensation during any 36 consecutive months of membership service. (See section 19-3-108(6), MCA.) As pay for legislators increases pursuant to statute, an individual legislator's HAC will also change accordingly.

employee--Years of Service x HAC x 1/56--the legislator's pension benefit would be $6,139 annually (or $511 monthly).

In more general terms, a legislator, once vested in PERS, should receive about $384 in annual pension benefits for each year of legislative service.[101] So a legislator who has served for a total of 6 years prior to retirement would receive an annual pension benefit of $2,302 ($192 monthly) and a legislator who served 10 years would receive an annual benefit of $3,837 (or $319 monthly).

Under the example in which a legislator with 16 years of legislative service subsequently enters other PERS-covered retirement, the legislator would receive upon retirement a pension benefit calculated on a larger number of "years of service", adding for each additional year of service about 1.786% of HAC. Thus, even at the same compensation earned as a legislator, the legislator-retiree could expect an additional $384 annually ($32/month) in PERS pension for each additional year of service in excess of the 16 years earned as a legislator.

A legislator accruing additional service at a higher rate of pay (than legislators' pay) would receive a pension benefit that is larger still than additional years of service alone.

To illustrate, if the same 16-years-of-service legislator works an additional 3 years following his or her legislative service and earns an average of $42,474 annually,[102] the annual pension benefit would increase to $14,411 (or $1,201/mo). That amount is derived from the basic formula: YoS x HAC x 1.786%. Substituting dollar amounts for the variables in the formula, the example from above would now show 19 (rather than 16) years of service times $42,474 (rather than $21,486) HAC times 1.786%. The result equals the $14,411 annual pension benefit (rather than $6,139).

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[101] This amount assumes that the legislator is a member of the PERS and has fewer than 25 years of membership service and is based on the current PERS benefit formula and the current rate of pay for legislators. The amount does not include the effect of the statutory "guaranteed annual benefit adjustment" or GABA.

[102] $42,474 was the average annual salary of all non-University System state employees reported in 2009. See State of Montana *Employee Profile*, January 2009, Montana Department of Administration, SHRD, p. 2. The *Employee Profile*, updated for 2010, shows a decline in the average salary to $42,457.

The example also stipulates a larger "highest average compensation" for the (former) legislator in post-legislative employment, which would also translate into a higher pension benefit, about $17.86 annually for each $1,000 additional highest average compensation.[103]

The SAVA makes no findings or recommendations regarding legislator's participation in the state's retirement systems.

**Issue 3: Pension Benefits: Highest, Lowest, and Typical**

During discussion by the SAVA members of the potential effect of salary spiking on the state's retirement systems, the members asked staff to attempt to obtain the pension benefit amounts paid to the 100 retirees or beneficiaries with the highest pensions from each state-sponsored retirement system.

In response, SAVA staff asked the executive directors of the PERA and TRS, respectively, for the information sought by the Committee and was informed that the data from which the information could be obtained had been provided to the Legislative Audit Division (LAD) staff in response to a separate information request received by and responded to by LAD staff.

Rather than repeating LAD's work, SAVA staff relied upon the LAD analysis and reported the highest 100 pension benefit amounts from the state's TRS and PERS defined benefit retirement plans as identified by LAD staff.[104] (See Appendix B for the full lists.)

To provide some context for the 100 highest pensions among state employee-retirees, SAVA staff also provided the 100 lowest pensions for the same groups (Appendix C), as well as the median pension and the 50 pension amounts both above and below the median (Appendix D).

Tables 6-A and 6-B show summary pension data for the Top 100, Bottom 100, and Median 100 of both PERS and TRS retirees (2005 through 2009) and for all PERS and TRS retirees (2005 through 2009).

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[103] The additional $17.86 in annual pension benefits for each $1,000 of HAC is at least partially paid for through employee contributions of $69 per $1,000 compensation and $71.70 per $1,000 compensation in the year earned, plus compounded earnings on the contributions and accumulated earnings.

[104] The pension data cover 2005 through 2009, i.e., the most recent 5 years for which annual reports of the retirement systems and, therefore, retirement data are available. For that time period, the data show 2,981 TRS retirees and 5,689 PERS retirees.

**Table 6-A: Summary of *Annual* Pension Benefit Data for Employees Who Retired in 2005 through 2009**

| Measure | | Top 100 | | Median 100 | | Bottom 100 | | All Retirees | |
|---|---|---|---|---|---|---|---|---|---|
| | | PERS | TRS | PERS | TRS | PERS | TRS | PERS | TRS |
| Range | Low | $55,496 | $48,872 | $11,945 | $22,009 | $194 | $614 | $194 | $614 |
| | High | $116,587 | $96,759 | $12,500 | $23,034 | $1,350 | $2,134 | $116,587 | $96,759 |
| Mean | | $65,031 | $58,369 | $12,242 | $22,547 | $993 | $1,352 | $16,484 | $22,631 |
| Median | | $61,590 | $55,702 | $12,240 | $22,553 | $1,033 | $1,303 | $12,238 | $22,548 |
| Std. Dev. | | $10,950 | $9,392 | $161 | $303 | $275 | $400 | $13,806 | $13,237 |

Information covers 2,981 TRS retirees and 5,689 PERS retirees for years 2005 through 2009.

**Table 6-B: Summary of *Monthly* Pension Benefit Data for Employees Who Retired in 2005 through 2009**

| Measure | | Top 100 | | Median 100 | | Bottom 100 | | All Retirees | |
|---|---|---|---|---|---|---|---|---|---|
| | | PERS | TRS | PERS | TRS | PERS | TRS | PERS | TRS |
| Range | Low | $4,625 | $4,073 | $995 | $1,834 | $16 | $51 | $16 | $51 |
| | High | $9,716 | $8,063 | $1,042 | $1,920 | $113 | $178 | $9,716 | $8,063 |
| Mean | | $5,419 | $4,864 | $1,020 | $1,879 | $83 | $113 | $1,374 | $1,886 |
| Median | | $5,133 | $4,642 | $1,020 | $1,879 | $86 | $109 | $1,020 | $1,879 |
| Std.Dev. | | $913 | $783 | $13 | $25 | $23 | $33 | $1,151 | $1,103 |

Information covers 2,981 TRS retirees and 5,689 PERS retirees for years 2005 through 2009.

The SAVA makes no findings or recommendations regarding the pensions paid to PERS or TRS retirees or beneficiaries.

**Issue 4: Prevalence of Higher Salary Increases at Higher Pay Levels**

During the Committee's discussion of the salary and pension data, Rep. Bob Mehlhoff suggested that outsized increases in pay seemed to occur more frequently or robustly among employees at higher levels of pay rather than among employees at lower or average levels of pay.

From the SAVA staff's analysis of the pay data provided by PERS, it appears that Rep. Mehlhoff's perception is probably correct. Generally speaking, among PERS employees who retired in 2008, those employees whose pay in their year of retirement was in the top three deciles increased by a larger average percentage than those employees whose pay in their year of retirement was in the middle- or bottom-three deciles.

Notable, perhaps, are the ranges of increases in pay within and among the decile groups. For example, the range of increases among the lowest decile (ranked by annual pay in 2007) varies from a low of -92% to a high of +1,514%. Comparatively, the range of increases among the highest decile (by pay in 2007) varies from a low of -7% to a high of +617%. While each of those specific data points is an anomaly, each works well to illustrate the variation in pay increases (and decreases) in years prior to retirement among state employee-retirees at various levels of income.

**Chart 1: Change in Annual Pay of 2008 PERS Retirees**

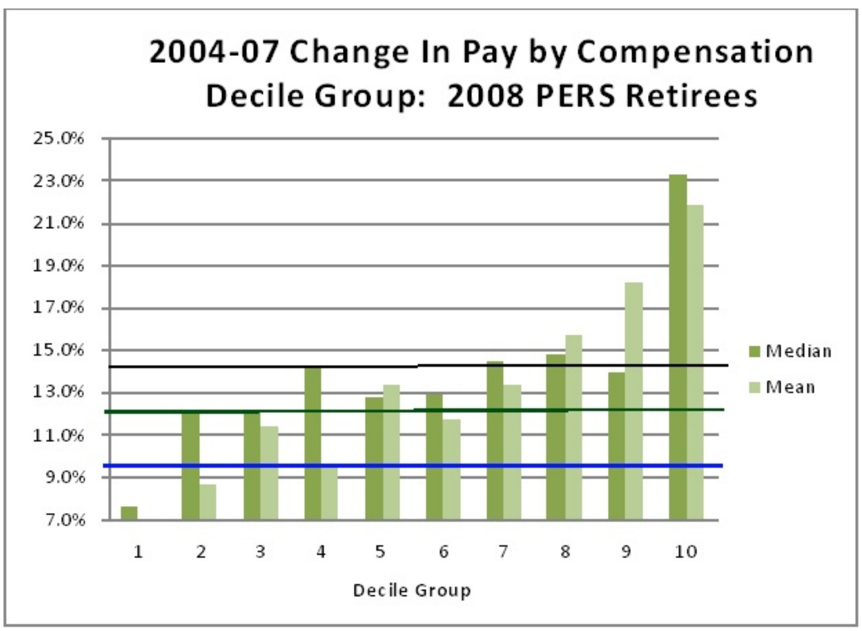


Chart 1 illustrates the mean and median changes in pay between 2004 and 2007 among deciles of PERS employee who retired in 2008 (based on 2007 salary). The heavier horizontal lines in the chart, from top to bottom, represent: (1) the mean (14.3%) and median (14.1%) pay increases among all PERS employees (top); (2) the actuarially-assumed general pay increase (10.07%, middle); and (3) the statutorily-provided general pay increase (9.25%, bottom).

The 14.3% increase in mean pay equates to annualized increases (2004-2007) of 4.55% while the 14.1% increase in median pay equates to annualized increases of 4.50%. The actuarially-assumed 10.07% increase derives from annualized general increases of 3.25%, and the statutory 9.25% increase corresponds to annualized increases of 2.99%.[105]

**DRAFT** ***SAVA Findings***

> The Committee finds:
> (1) State employees covered by the PERS and paid at levels higher than most state employees have generally received higher average annualized increases in pay than state PERS-covered employees paid at levels below most state employees.
> (2) In general, state employees covered by PERS have received higher average annualized pay increases than the increases assumed for the actuarial evaluation of the PERS or statutorily provided by the legislature through generally-applicable pay increases.
> The SAVA members make no recommendations regarding pay increases for state employees nearing retirement eligibility or for state employees in general.

## Issue 5: Imposing Caps to Mitigate Spiking

The SAVA Committee members discussed--questioned is perhaps more accurate--whether there is a need for the legislature to impose caps on pay increases to mitigate salary spiking prior to retirement.

In considering whether to recommend legislation to cap pre-retirement pay increases to mitigate salary spiking that negatively affects the actuarial status of the defined benefit retirement systems, it would seem

[105] Because the statutory pay increase in 2005 was 25-cents per hour, the corresponding percentage increase varied by an employee's base pay. The 9.25% compounded increase assumes the 25-cents per hour was, on average, a 1.5% increase in base pay, indicating base pay of ~$16.67/hour or $34,667 annually in 2004. On base pay less than $16.67/hour, the percentage increase would be greater than 1.5%; on base pay exceeding $16.67/hour the percentage increase would be less than 1.5%. Statutory increases in 2006 and 2007were 3.5% and 4% respectively.

appropriate that a determination should be made whether salary spiking occurs at such frequency or to such a degree, or both, that it is a problem that needs to be fixed. Such was the case when the 55th Legislature (1997) imposed a cap on pre-retirement pay increases within the TRS.[106]

> **19-20-715. Compensation limit.** (1)....
>
> (2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board....

The Teachers' Retirement Board (TRB) has adopted administrative rules that implement section 19-20-715, MCA, and that provide for seven exceptions to the cap as authorized by the statute. The seven exceptions are increases in pay that result from:

> (1) collective bargaining agreements;
>
> (2) a change or adjustments in a salary schedule covering a certifiable group of employees not covered under a collective bargaining agreement. The employer must certify the group of employees affected by the change or adjustment in the salary schedule, the increase received by each employee, and the methodology for determining the increases;
>
> (3) compensation received for summer employment, provided summer compensation does not exceed one-ninth of the academic year contract for each full month or prorated for each portion of a month employed during the summer;
>
> (4) change of employer;
>
> (5) re-employment for a period of not less than one year following a break in service;
>
> (6) a promotion to an existing permanent position with the same employer. The assignment of temporary duties or a new job added to existing duties, an acting or interim appointment, a change in classification or title, or an increase in compensation received would not qualify as a promotion; or
>
> (7) the combination of salary from multiple employers that when reviewed separately does not exceed 10%.
>
> (From section 2.44.518, ARM)

[106] Ch. 442, L. 1997.

David Senn, Executive Director of the TRS, has indicated that the statute and rules capping pay increases for TRS members have probably not eliminated spiking completely. Information he provided to the SAVA notes that "...between July 1990 and April 2010, 747 exceptions to the 10% cap were authorized, with an average benefit increase was (sic) $44.04 per month. The actuarial cost over this period of time has been approximately $4.8 million."[107]

In following up on his testimony and the information he provided to SAVA in June, staff asked Mr. Senn how successful the attempt to cap salaries has been and what have been the pitfalls?

He responded that he doesn't have answers to either question because he has no way to identify salaries that have been capped, the amounts, or how many people just worked an additional year to avoid the cap.[108]

Nevertheless, in potential legislation proposed by the TRB and submitted for SAVA consideration at the June 24-25, 2010 meeting, the Board, through Mr. Senn, offered several options to improve the statutory cap on pay increases in the context of TRS pension calculations.

> Repeal all or most exceptions to the 10% cap, §19-20-715, MCA. There may be a need to allow exceptions for increases resulting from movement on a collectively bargained salary matrix, or for increases resulting from a move from part-time to full-time employment or part-time positions in general. An alternative to exempting increases in excess of 10% that result from causes other than collective bargaining would be to allow the excess to exceed the cap by a certain dollar amount, e.g., $100, or to increase the cap to 12 or 15 percent and not provide for any exceptions.

The SAVA members make no formal findings or recommendations regarding establishing new or revising existing salary caps for employees covered by the state's retirement systems.

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[107] *TRS Board 2011 Legislative Concepts*, SAVA Committee Meeting June 24 & 25, 2010, p. 3, submitted by David Senn, Ex. Dir., TRS.

[108] Email exchange between Dave Bohyer, LSD Research Director, and David Senn, TRS Executive Director, July 14 & 19, 2010.

## SUMMARY AND CONCLUSION

The HJR 35 study of bonus pay did not shed much additional light on the state's policies or practices regarding the payment of bonuses as compensation. In summary, what the study did reveal or reinforce is threefold:

1. current law is sufficient to preclude the payment of a bonus if attempted by an elected official following an election defeat or by any other person, including an elected official, who is responsible for making pay decisions and who does not follow the law and pay rules;
2. Montana's policies regarding bonus pay generally reflect what may be considered "best practices" in regard to recommended bonus pay policies; and
3. analysis of the practical application of bonus pay or any other type of pay-for-performance within Montana state government is difficult, if not impossible, to determine or assess due to the limitations of available data.

As a result of the findings, the Committee recommends:

1. that the primary statutes governing bonus pay, both those statutes that allow for bonus pay as part of the broadband pay plan and those that preclude illegal bonus pay, be retained intact; and
2. that the Department of Administration exercise its authority to ensure that agencies are in compliance with section 2-18-301, MCA, and MOM Policy 3-05-1.

The SAVA members and staff reviewed copious amounts of data in conjunction with the HJR 35 study, yet were left wanting for information on the payment of bonuses. If the legislature hopes to rely on data on which changes to bonus pay policy can be made, it may need to consult with and encourage the Executive Branch to develop clearer and perhaps stricter guidelines for agencies to follow, to institute mechanisms and processes to ensure consistent application of the mechanisms and processes among and within agencies, to design review criteria and procedures for assessing the effectiveness of bonus policies and the guidelines established for implementing them, and perhaps reporting requirements.

Similar consultation and encouragement may be advisable to the extent the legislature is similarly motivated regarding its desire for data or information on other elements of state employee compensation--salary spiking, market competitiveness, recruitment, retention, etc.--to be used as the basis for making compensation policy decisions in a broader context. Without such data and information, future legislatures will be left to base their decisions, at best, primarily on anecdotal evidence and broad generalizations.

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att: Appendices

## APPENDIX A

Suggestion to Readers

- The base salary data in this Appendix was provided by the Montana Public Employees Retirement Administration (PERA) via an Excel spreadsheet. All of the calculations are derived from the base data and are the author's.

- It is not uncommon for an employee-retiree to work less than a full year in the year of retirement. For such employee-retirees, the person's annual pay in the year prior to the retirement year is higher than the person's annual pay in the year of retirement. Therefore, the column titled, "Total Change" on the right hand side of the spreadsheet is based on the higher of a retiree-employee's annual pay in the year of retirement or the year prior to the year of retirement.

- Montana law provides that when an employee retires, he/she is to be paid for all unused annual leave, all unused compensatory time (paid only to employees who are "exempt" from wage and hour statutes), and one-quarter of all unused sick leave. The payout for unused leave is called "termination pay" and shows up in the base data as annual pay in the employee-retiree's final year of employment, i.e., the year of retirement. For exempt employees who actually retire in their final year of employment, the amount of "termination pay" can be sizeable and, whenever it is, the final year's annual pay will appear to be outsized and may indicate a spike in salary. Therefore, the reader should determine the amount of termination pay included in the final year's annual pay before deciding whether or not the pay of an employee-retiree actually spiked.

- A substantial change in the nominal annual pay of an employee-retiree may cause the casual reader to suspect salary spiking. Factors 1 through 7 discussed on pages 6 through 8 of the memorandum outline a number of reasons that the annual pay of an employee-retiree may have increased from one year to the next or over a several year period. Therefore, a quick conclusion that any employee-retiree was involved in salary spiking is ill-advised and should be delayed until the underlying reasons for a pay increase or increases can be determined.

**Appendix B**
**TOP 100 Annual Pensions in TRS and PERS**

**TRS Retirees**

| TRS ID | Annual Benefit | Monthly | TRS ID | Annual Benefit | Monthly |
|---|---|---|---|---|---|
| 1 | $96,759 | $8,063 | 51 | $55,595 | $4,633 |
| 2 | $92,369 | $7,697 | 52 | $55,057 | $4,588 |
| 3 | $86,961 | $7,247 | 53 | $54,492 | $4,541 |
| 4 | $77,581 | $6,465 | 54 | $54,491 | $4,541 |
| 5 | $77,514 | $6,460 | 55 | $54,341 | $4,528 |
| 6 | $76,241 | $6,353 | 56 | $53,831 | $4,486 |
| 7 | $74,847 | $6,237 | 57 | $53,819 | $4,485 |
| 8 | $72,811 | $6,068 | 58 | $53,453 | $4,454 |
| 9 | $72,687 | $6,057 | 59 | $53,370 | $4,447 |
| 10 | $72,253 | $6,021 | 60 | $53,132 | $4,428 |
| 11 | $71,908 | $5,992 | 61 | $53,088 | $4,424 |
| 12 | $71,870 | $5,989 | 62 | $52,908 | $4,409 |
| 13 | $69,697 | $5,808 | 63 | $52,884 | $4,407 |
| 14 | $68,180 | $5,682 | 64 | $52,883 | $4,407 |
| 15 | $66,844 | $5,570 | 65 | $52,743 | $4,395 |
| 16 | $66,345 | $5,529 | 66 | $52,629 | $4,386 |
| 17 | $64,649 | $5,387 | 67 | $52,450 | $4,371 |
| 18 | $64,163 | $5,347 | 68 | $52,312 | $4,359 |
| 19 | $64,027 | $5,336 | 69 | $52,196 | $4,350 |
| 20 | $63,854 | $5,321 | 70 | $52,162 | $4,347 |
| 21 | $63,192 | $5,266 | 71 | $52,156 | $4,346 |
| 22 | $62,823 | $5,235 | 72 | $51,997 | $4,333 |
| 23 | $61,961 | $5,163 | 73 | $51,920 | $4,327 |
| 24 | $61,211 | $5,101 | 74 | $51,774 | $4,314 |
| 25 | $61,200 | $5,100 | 75 | $51,691 | $4,308 |
| 26 | $61,139 | $5,095 | 76 | $51,516 | $4,293 |
| 27 | $60,650 | $5,054 | 77 | $51,448 | $4,287 |
| 28 | $60,634 | $5,053 | 78 | $51,360 | $4,280 |
| 29 | $60,594 | $5,050 | 79 | $51,328 | $4,277 |
| 30 | $60,440 | $5,037 | 80 | $51,210 | $4,268 |
| 31 | $60,018 | $5,001 | 81 | $51,132 | $4,261 |
| 32 | $59,641 | $4,970 | 82 | $51,058 | $4,255 |
| 33 | $59,641 | $4,970 | 83 | $50,961 | $4,247 |
| 34 | $59,502 | $4,959 | 84 | $50,897 | $4,241 |
| 35 | $59,433 | $4,953 | 85 | $50,828 | $4,236 |
| 36 | $59,275 | $4,940 | 86 | $50,657 | $4,221 |
| 37 | $59,041 | $4,920 | 87 | $50,615 | $4,218 |
| 38 | $58,788 | $4,899 | 88 | $50,552 | $4,213 |
| 39 | $58,275 | $4,856 | 89 | $50,552 | $4,213 |
| 40 | $58,252 | $4,854 | 90 | $49,930 | $4,161 |
| 41 | $58,251 | $4,854 | 91 | $49,883 | $4,157 |
| 42 | $58,066 | $4,839 | 92 | $49,729 | $4,144 |
| 43 | $57,980 | $4,832 | 93 | $49,557 | $4,130 |
| 44 | $57,919 | $4,827 | 94 | $49,504 | $4,125 |
| 45 | $57,896 | $4,825 | 95 | $49,426 | $4,119 |
| 46 | $57,830 | $4,819 | 96 | $49,272 | $4,106 |
| 47 | $57,487 | $4,791 | 97 | $49,155 | $4,096 |
| 48 | $56,906 | $4,742 | 98 | $49,029 | $4,086 |
| 49 | $56,692 | $4,724 | 99 | $48,993 | $4,083 |
| 50 | $55,809 | $4,651 | 100 | $48,872 | $4,073 |

**PERS Retireees**

| PERS ID | Annual Benefit | Monthly | PERS ID | Annual Benefit | Monthly |
|---|---|---|---|---|---|
| 1 | $116,587 | $9,716 | 51 | $61,553 | $5,129 |
| 2 | $100,295 | $8,358 | 52 | $61,194 | $5,100 |
| 3 | $ 98,466 | $8,205 | 53 | $60,845 | $5,070 |
| 4 | $ 92,229 | $7,686 | 54 | $60,494 | $5,041 |
| 5 | $ 86,613 | $7,218 | 55 | $60,485 | $5,040 |
| 6 | $ 84,585 | $7,049 | 56 | $60,356 | $5,030 |
| 7 | $ 83,390 | $6,949 | 57 | $60,140 | $5,012 |
| 8 | $ 82,631 | $6,886 | 58 | $59,880 | $4,990 |
| 9 | $ 82,201 | $6,850 | 59 | $59,838 | $4,987 |
| 10 | $ 81,360 | $6,780 | 60 | $58,912 | $4,909 |
| 11 | $ 81,048 | $6,754 | 61 | $58,792 | $4,899 |
| 12 | $ 80,492 | $6,708 | 62 | $58,755 | $4,896 |
| 13 | $ 77,546 | $6,462 | 63 | $58,717 | $4,893 |
| 14 | $ 75,656 | $6,305 | 64 | $58,598 | $4,883 |
| 15 | $ 75,468 | $6,289 | 65 | $58,479 | $4,873 |
| 16 | $ 75,179 | $6,265 | 66 | $58,450 | $4,871 |
| 17 | $ 73,831 | $6,153 | 67 | $58,069 | $4,839 |
| 18 | $ 70,680 | $5,890 | 68 | $58,045 | $4,837 |
| 19 | $ 69,692 | $5,808 | 69 | $57,986 | $4,832 |
| 20 | $ 69,452 | $5,788 | 70 | $57,878 | $4,823 |
| 21 | $ 69,414 | $5,785 | 71 | $57,675 | $4,806 |
| 22 | $ 68,374 | $5,698 | 72 | $57,674 | $4,806 |
| 23 | $ 68,190 | $5,682 | 73 | $57,668 | $4,806 |
| 24 | $ 67,924 | $5,660 | 74 | $57,643 | $4,804 |
| 25 | $ 67,911 | $5,659 | 75 | $57,636 | $4,803 |
| 26 | $ 67,608 | $5,634 | 76 | $57,609 | $4,801 |
| 27 | $ 67,437 | $5,620 | 77 | $57,583 | $4,799 |
| 28 | $ 67,209 | $5,601 | 78 | $57,206 | $4,767 |
| 29 | $ 66,859 | $5,572 | 79 | $57,194 | $4,766 |
| 30 | $ 66,296 | $5,525 | 80 | $57,176 | $4,765 |
| 31 | $ 66,176 | $5,515 | 81 | $56,985 | $4,749 |
| 32 | $ 66,032 | $5,503 | 82 | $56,925 | $4,744 |
| 33 | $ 65,914 | $5,493 | 83 | $56,738 | $4,728 |
| 34 | $ 65,828 | $5,486 | 84 | $56,698 | $4,725 |
| 35 | $ 65,750 | $5,479 | 85 | $56,657 | $4,721 |
| 36 | $ 65,652 | $5,471 | 86 | $56,625 | $4,719 |
| 37 | $ 65,269 | $5,439 | 87 | $56,619 | $4,718 |
| 38 | $ 65,027 | $5,419 | 88 | $56,586 | $4,716 |
| 39 | $ 64,222 | $5,352 | 89 | $56,372 | $4,698 |
| 40 | $ 64,200 | $5,350 | 90 | $56,344 | $4,695 |
| 41 | $ 63,773 | $5,314 | 91 | $56,191 | $4,683 |
| 42 | $ 63,157 | $5,263 | 92 | $56,178 | $4,682 |
| 43 | $ 63,143 | $5,262 | 93 | $56,040 | $4,670 |
| 44 | $ 63,121 | $5,260 | 94 | $55,984 | $4,665 |
| 45 | $ 63,088 | $5,257 | 95 | $55,874 | $4,656 |
| 46 | $ 62,600 | $5,217 | 96 | $55,748 | $4,646 |
| 47 | $ 62,578 | $5,215 | 97 | $55,633 | $4,636 |
| 48 | $ 62,180 | $5,182 | 98 | $55,575 | $4,631 |
| 49 | $ 61,798 | $5,150 | 99 | $55,538 | $4,628 |
| 50 | $ 61,627 | $5,136 | 100 | $55,496 | $4,625 |

Source: Legislative Audit Division staff from data provided by the Teachers' Retirement System and the Public Employees' Retirement Administration, July 2010. Data covers 2,981 TRS retirees and 5,689 PERS retirees for years 2005 through 2009.

## Appendix C
## BOTTOM 100 Annual Pensions in TRS and PERS

### TRS Retirees

| TRS ID | Annual Benefit | Monthly | TRS ID | Annual Benefit | Monthly |
|---|---|---|---|---|---|
| 2882 | $2,134 | $178 | 2932 | $1,300 | $108 |
| 2883 | $2,096 | $175 | 2933 | $1,292 | $108 |
| 2884 | $2,089 | $174 | 2934 | $1,288 | $107 |
| 2885 | $2,069 | $172 | 2935 | $1,268 | $106 |
| 2886 | $2,023 | $169 | 2936 | $1,260 | $105 |
| 2887 | $2,014 | $168 | 2937 | $1,257 | $105 |
| 2888 | $2,005 | $167 | 2938 | $1,245 | $104 |
| 2889 | $1,994 | $166 | 2939 | $1,243 | $104 |
| 2890 | $1,982 | $165 | 2940 | $1,234 | $103 |
| 2891 | $1,933 | $161 | 2941 | $1,214 | $101 |
| 2892 | $1,925 | $160 | 2942 | $1,214 | $101 |
| 2893 | $1,906 | $159 | 2943 | $1,208 | $101 |
| 2894 | $1,884 | $157 | 2944 | $1,203 | $100 |
| 2895 | $1,846 | $154 | 2945 | $1,200 | $100 |
| 2896 | $1,828 | $152 | 2946 | $1,197 | $100 |
| 2897 | $1,825 | $152 | 2947 | $1,188 | $99 |
| 2898 | $1,816 | $151 | 2948 | $1,167 | $97 |
| 2899 | $1,796 | $150 | 2949 | $1,121 | $93 |
| 2900 | $1,786 | $149 | 2950 | $1,119 | $93 |
| 2901 | $1,784 | $149 | 2951 | $1,099 | $92 |
| 2902 | $1,719 | $143 | 2952 | $1,099 | $92 |
| 2903 | $1,710 | $143 | 2953 | $1,071 | $89 |
| 2904 | $1,695 | $141 | 2954 | $1,067 | $89 |
| 2905 | $1,669 | $139 | 2955 | $1,066 | $89 |
| 2906 | $1,668 | $139 | 2956 | $1,062 | $89 |
| 2907 | $1,629 | $136 | 2957 | $1,057 | $88 |
| 2908 | $1,623 | $135 | 2958 | $1,054 | $88 |
| 2909 | $1,619 | $135 | 2959 | $1,045 | $87 |
| 2910 | $1,605 | $134 | 2960 | $1,039 | $87 |
| 2911 | $1,597 | $133 | 2961 | $1,019 | $85 |
| 2912 | $1,587 | $132 | 2962 | $986 | $82 |
| 2913 | $1,572 | $131 | 2963 | $963 | $80 |
| 2914 | $1,570 | $131 | 2964 | $953 | $79 |
| 2915 | $1,563 | $130 | 2965 | $936 | $78 |
| 2916 | $1,532 | $128 | 2966 | $924 | $77 |
| 2917 | $1,530 | $127 | 2967 | $918 | $77 |
| 2918 | $1,530 | $127 | 2968 | $913 | $76 |
| 2919 | $1,464 | $122 | 2969 | $910 | $76 |
| 2920 | $1,449 | $121 | 2970 | $863 | $72 |
| 2921 | $1,415 | $118 | 2971 | $846 | $70 |
| 2922 | $1,415 | $118 | 2972 | $839 | $70 |
| 2923 | $1,406 | $117 | 2973 | $787 | $66 |
| 2924 | $1,388 | $116 | 2974 | $740 | $62 |
| 2925 | $1,369 | $114 | 2975 | $705 | $59 |
| 2926 | $1,367 | $114 | 2976 | $684 | $57 |
| 2927 | $1,363 | $114 | 2977 | $680 | $57 |
| 2928 | $1,347 | $112 | 2978 | $661 | $55 |
| 2929 | $1,331 | $111 | 2979 | $656 | $55 |
| 2930 | $1,311 | $109 | 2980 | $635 | $53 |
| 2931 | $1,305 | $109 | 2981 | $614 | $51 |

### PERS Retireees

| PERS ID | Annual Benefit | Monthly | PERS ID | Annual Benefit | Monthly |
|---|---|---|---|---|---|
| 5590 | $1,350 | $113 | 5640 | $1,018 | $85 |
| 5591 | $1,350 | $112 | 5641 | $1,012 | $84 |
| 5592 | $1,338 | $112 | 5642 | $1,009 | $84 |
| 5593 | $1,338 | $112 | 5643 | $1,008 | $84 |
| 5594 | $1,335 | $111 | 5644 | $1,005 | $84 |
| 5595 | $1,335 | $111 | 5645 | $1,000 | $83 |
| 5596 | $1,332 | $111 | 5646 | $998 | $83 |
| 5597 | $1,323 | $110 | 5647 | $997 | $83 |
| 5598 | $1,307 | $109 | 5648 | $996 | $83 |
| 5599 | $1,307 | $109 | 5649 | $989 | $82 |
| 5600 | $1,302 | $108 | 5650 | $979 | $82 |
| 5601 | $1,291 | $108 | 5651 | $977 | $81 |
| 5602 | $1,283 | $107 | 5652 | $973 | $81 |
| 5603 | $1,278 | $106 | 5653 | $963 | $80 |
| 5604 | $1,269 | $106 | 5654 | $945 | $79 |
| 5605 | $1,268 | $106 | 5655 | $932 | $78 |
| 5606 | $1,262 | $105 | 5656 | $929 | $77 |
| 5607 | $1,249 | $104 | 5657 | $897 | $75 |
| 5608 | $1,237 | $103 | 5658 | $893 | $74 |
| 5609 | $1,236 | $103 | 5659 | $883 | $74 |
| 5610 | $1,231 | $103 | 5660 | $880 | $73 |
| 5611 | $1,229 | $102 | 5661 | $878 | $73 |
| 5612 | $1,229 | $102 | 5662 | $858 | $71 |
| 5613 | $1,207 | $101 | 5663 | $844 | $70 |
| 5614 | $1,203 | $100 | 5664 | $835 | $70 |
| 5615 | $1,196 | $100 | 5665 | $811 | $68 |
| 5616 | $1,196 | $100 | 5666 | $802 | $67 |
| 5617 | $1,195 | $100 | 5667 | $802 | $67 |
| 5618 | $1,194 | $100 | 5668 | $782 | $65 |
| 5619 | $1,190 | $99 | 5669 | $775 | $65 |
| 5620 | $1,183 | $99 | 5670 | $767 | $64 |
| 5621 | $1,182 | $98 | 5671 | $732 | $61 |
| 5622 | $1,173 | $98 | 5672 | $718 | $60 |
| 5623 | $1,163 | $97 | 5673 | $702 | $58 |
| 5624 | $1,161 | $97 | 5674 | $679 | $57 |
| 5625 | $1,149 | $96 | 5675 | $656 | $55 |
| 5626 | $1,149 | $96 | 5676 | $639 | $53 |
| 5627 | $1,146 | $95 | 5677 | $633 | $53 |
| 5628 | $1,144 | $95 | 5678 | $599 | $50 |
| 5629 | $1,141 | $95 | 5679 | $586 | $49 |
| 5630 | $1,130 | $94 | 5680 | $559 | $47 |
| 5631 | $1,129 | $94 | 5681 | $556 | $46 |
| 5632 | $1,129 | $94 | 5682 | $553 | $46 |
| 5633 | $1,115 | $93 | 5683 | $534 | $45 |
| 5634 | $1,115 | $93 | 5684 | $521 | $43 |
| 5635 | $1,081 | $90 | 5685 | $494 | $41 |
| 5636 | $1,079 | $90 | 5686 | $402 | $34 |
| 5637 | $1,074 | $90 | 5687 | $255 | $21 |
| 5638 | $1,068 | $89 | 5688 | $244 | $20 |
| 5639 | $1,048 | $87 | 5689 | $194 | $16 |

Source: Legislative Audit Division staff from data provided by the Teachers' Retirement System and the Public Employees' Retirement Administration, July 2010. Data covers 2,981 TRS retirees and 5,689 PERS retirees for years 2005 through 2009.

**Appendix D**
**MEDIAN 100 Annual Pensions in TRS and PERS**

**TRS Retirees**

| TRS ID | Annual Benefit | Monthly | TRS ID | Annual Benefit | Monthly |
|---|---|---|---|---|---|
| 1440 | $23,034 | $1,920 | 1490 | $22,551 | $1,879 |
| 1441 | $23,034 | $1,920 | 1491 | $22,548 | $1,879 |
| 1442 | $23,034 | $1,920 | 1492 | $22,542 | $1,878 |
| 1443 | $23,028 | $1,919 | 1493 | $22,506 | $1,875 |
| 1444 | $23,023 | $1,919 | 1494 | $22,489 | $1,874 |
| 1445 | $23,018 | $1,918 | 1495 | $22,478 | $1,873 |
| 1446 | $23,006 | $1,917 | 1496 | $22,474 | $1,873 |
| 1447 | $22,992 | $1,916 | 1497 | $22,468 | $1,872 |
| 1448 | $22,980 | $1,915 | 1498 | $22,455 | $1,871 |
| 1449 | $22,976 | $1,915 | 1499 | $22,454 | $1,871 |
| 1450 | $22,971 | $1,914 | 1500 | $22,449 | $1,871 |
| 1451 | $22,968 | $1,914 | 1501 | $22,432 | $1,869 |
| 1452 | $22,956 | $1,913 | 1502 | $22,430 | $1,869 |
| 1453 | $22,951 | $1,913 | 1503 | $22,430 | $1,869 |
| 1454 | $22,935 | $1,911 | 1504 | $22,423 | $1,869 |
| 1455 | $22,926 | $1,911 | 1505 | $22,394 | $1,866 |
| 1456 | $22,923 | $1,910 | 1506 | $22,392 | $1,866 |
| 1457 | $22,911 | $1,909 | 1507 | $22,386 | $1,865 |
| 1458 | $22,910 | $1,909 | 1508 | $22,378 | $1,865 |
| 1459 | $22,855 | $1,905 | 1509 | $22,376 | $1,865 |
| 1460 | $22,850 | $1,904 | 1510 | $22,351 | $1,863 |
| 1461 | $22,841 | $1,903 | 1511 | $22,331 | $1,861 |
| 1462 | $22,841 | $1,903 | 1512 | $22,325 | $1,860 |
| 1463 | $22,826 | $1,902 | 1513 | $22,304 | $1,859 |
| 1464 | $22,811 | $1,901 | 1514 | $22,283 | $1,857 |
| 1465 | $22,785 | $1,899 | 1515 | $22,283 | $1,857 |
| 1466 | $22,783 | $1,899 | 1516 | $22,276 | $1,856 |
| 1467 | $22,772 | $1,898 | 1517 | $22,262 | $1,855 |
| 1468 | $22,771 | $1,898 | 1518 | $22,257 | $1,855 |
| 1469 | $22,756 | $1,896 | 1519 | $22,243 | $1,854 |
| 1470 | $22,742 | $1,895 | 1520 | $22,240 | $1,853 |
| 1471 | $22,721 | $1,893 | 1521 | $22,224 | $1,852 |
| 1472 | $22,704 | $1,892 | 1522 | $22,193 | $1,849 |
| 1473 | $22,698 | $1,891 | 1523 | $22,192 | $1,849 |
| 1474 | $22,694 | $1,891 | 1524 | $22,179 | $1,848 |
| 1475 | $22,686 | $1,891 | 1525 | $22,171 | $1,848 |
| 1476 | $22,665 | $1,889 | 1526 | $22,169 | $1,847 |
| 1477 | $22,664 | $1,889 | 1527 | $22,167 | $1,847 |
| 1478 | $22,640 | $1,887 | 1528 | $22,167 | $1,847 |
| 1479 | $22,636 | $1,886 | 1529 | $22,137 | $1,845 |
| 1480 | $22,635 | $1,886 | 1530 | $22,125 | $1,844 |
| 1481 | $22,622 | $1,885 | 1531 | $22,111 | $1,843 |
| 1482 | $22,620 | $1,885 | 1532 | $22,102 | $1,842 |
| 1483 | $22,615 | $1,885 | 1533 | $22,078 | $1,840 |
| 1484 | $22,595 | $1,883 | 1534 | $22,071 | $1,839 |
| 1485 | $22,582 | $1,882 | 1535 | $22,064 | $1,839 |
| 1486 | $22,569 | $1,881 | 1536 | $22,052 | $1,838 |
| 1487 | $22,566 | $1,881 | 1537 | $22,037 | $1,836 |
| 1488 | $22,559 | $1,880 | 1538 | $22,018 | $1,835 |
| 1489 | $22,555 | $1,880 | 1539 | $22,009 | $1,834 |

**PERS Retireees**

| PERS ID | Annual Benefit | Monthly | PERS ID | Annual Benefit | Monthly |
|---|---|---|---|---|---|
| 2795 | $12,500 | $1,042 | 2845 | $12,238 | $1,020 |
| 2796 | $12,500 | $1,042 | 2846 | $12,235 | $1,020 |
| 2797 | $12,494 | $1,041 | 2847 | $12,229 | $1,019 |
| 2798 | $12,489 | $1,041 | 2848 | $12,227 | $1,019 |
| 2799 | $12,487 | $1,041 | 2849 | $12,225 | $1,019 |
| 2800 | $12,484 | $1,040 | 2850 | $12,225 | $1,019 |
| 2801 | $12,474 | $1,040 | 2851 | $12,224 | $1,019 |
| 2802 | $12,468 | $1,039 | 2852 | $12,223 | $1,019 |
| 2803 | $12,467 | $1,039 | 2853 | $12,217 | $1,018 |
| 2804 | $12,464 | $1,039 | 2854 | $12,216 | $1,018 |
| 2805 | $12,455 | $1,038 | 2855 | $12,204 | $1,017 |
| 2806 | $12,454 | $1,038 | 2856 | $12,199 | $1,017 |
| 2807 | $12,453 | $1,038 | 2857 | $12,196 | $1,016 |
| 2808 | $12,451 | $1,038 | 2858 | $12,190 | $1,016 |
| 2809 | $12,444 | $1,037 | 2859 | $12,186 | $1,016 |
| 2810 | $12,428 | $1,036 | 2860 | $12,167 | $1,014 |
| 2811 | $12,427 | $1,036 | 2861 | $12,164 | $1,014 |
| 2812 | $12,420 | $1,035 | 2862 | $12,161 | $1,013 |
| 2813 | $12,417 | $1,035 | 2863 | $12,157 | $1,013 |
| 2814 | $12,396 | $1,033 | 2864 | $12,152 | $1,013 |
| 2815 | $12,394 | $1,033 | 2865 | $12,148 | $1,012 |
| 2816 | $12,390 | $1,033 | 2866 | $12,147 | $1,012 |
| 2817 | $12,382 | $1,032 | 2867 | $12,145 | $1,012 |
| 2818 | $12,381 | $1,032 | 2868 | $12,135 | $1,011 |
| 2819 | $12,380 | $1,032 | 2869 | $12,132 | $1,011 |
| 2820 | $12,379 | $1,032 | 2870 | $12,118 | $1,010 |
| 2821 | $12,377 | $1,031 | 2871 | $12,103 | $1,009 |
| 2822 | $12,377 | $1,031 | 2872 | $12,100 | $1,008 |
| 2823 | $12,364 | $1,030 | 2873 | $12,088 | $1,007 |
| 2824 | $12,358 | $1,030 | 2874 | $12,072 | $1,006 |
| 2825 | $12,355 | $1,030 | 2875 | $12,071 | $1,006 |
| 2826 | $12,353 | $1,029 | 2876 | $12,060 | $1,005 |
| 2827 | $12,348 | $1,029 | 2877 | $12,059 | $1,005 |
| 2828 | $12,339 | $1,028 | 2878 | $12,053 | $1,004 |
| 2829 | $12,331 | $1,028 | 2879 | $12,047 | $1,004 |
| 2830 | $12,308 | $1,026 | 2880 | $12,035 | $1,003 |
| 2831 | $12,305 | $1,025 | 2881 | $12,029 | $1,002 |
| 2832 | $12,304 | $1,025 | 2882 | $12,020 | $1,002 |
| 2833 | $12,302 | $1,025 | 2883 | $12,019 | $1,002 |
| 2834 | $12,289 | $1,024 | 2884 | $12,015 | $1,001 |
| 2835 | $12,285 | $1,024 | 2885 | $11,998 | $1,000 |
| 2836 | $12,284 | $1,024 | 2886 | $11,997 | $1,000 |
| 2837 | $12,283 | $1,024 | 2887 | $11,997 | $1,000 |
| 2838 | $12,283 | $1,024 | 2888 | $11,988 | $999 |
| 2839 | $12,255 | $1,021 | 2889 | $11,979 | $998 |
| 2840 | $12,255 | $1,021 | 2890 | $11,973 | $998 |
| 2841 | $12,249 | $1,021 | 2891 | $11,963 | $997 |
| 2842 | $12,247 | $1,021 | 2892 | $11,959 | $997 |
| 2843 | $12,244 | $1,020 | 2893 | $11,949 | $996 |
| 2844 | $12,242 | $1,020 | 2894 | $11,945 | $995 |

Source: Legislative Audit Division staff from data provided by the Teachers' Retirement System and the Public Employees' Retirement Administration, July 2010. Data covers 2,981 TRS retirees and 5,689 PERS retirees for years 2005 through 2009.