

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through III that establish	)	PROPOSED ADOPTION OF NEW
criteria to be used by the Board's	)	RULES
actuary to obtain information related	)	
to PERS, its amortization period, its	)	
funding status, its future GABA rates,	)	
and its actuarial equivalent factors	)	

TO: All Concerned Persons

1. On September 23, 2013 at 2:00 p.m., the Public Employees' Retirement Board will hold a public hearing in Room 201, 100 N Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employee Retirement Administration no later than 5:00 p.m. on September 16, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Public Employee Retirement Administration, P.O. Box 200131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service/etc (406) 444-1421; or e-mail kvladic@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING GABA (1) For purposes of determining the PERS GABA rates referenced in 19-3-1605(5), MCA (2013), the actuary will:

(a) reduce the 1.5% GABA rate established in 19-3-1605(4), MCA (2013) by 0.1% for each full 2 percentage points the funded percentage is below 90%;

(b) establish a GABA rate expressed in tenths of a percent.

(2) This rule will not apply until the PERS amortization period is under 40 years.

(3) Once the PERS amortization period is under 40 years, the actuary will adjust the 1.5% GABA each year, based on that year's funding percentage.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for determining the GABA rate to be applied to PERS retiree benefits on an annual basis.

The actuary questioned whether GABA should be reduced proportionately. For example, if the funded percentage is 79%, should the GABA be reduced from 1.5% to .95% ( $90\% - 79\%/2 = .55\%$ ;  $1.5\% - .55\% = .95\%$ )? The Board determined that reductions in one tenth of one percent would be sufficient to meet the legislative goal of bringing the system to a position of actuarially sound funding while maintaining the ability to explain the GABA reductions to members and without causing undue administrative hardship. Thus, in the above example, the GABA rate would be reduced from 1.5% to 1% ( $90\% - 80\%/2 = .5\%$ ;  $1.5\% - .50\% = 1.0\%$ ).

Subsections (2) and (3) are necessary to specify how the GABA rate will be calculated each year after the amortization period is below 40 years. Members and stakeholders have questioned whether the legislation provides a mechanism for changing the GABA each year. The Board believes the legislation was intended to allow the GABA to be recalculated and reset each year in a manner consistent with 19-3-1605(5), MCA.

NEW RULE II APPLICATION OF ACTUARIAL ASSUMPTIONS AND PROCESS FOR DETERMINING ACTUARIAL EQUIVALENT FACTORS (1) For purposes of determining actuarial equivalent factors for optional benefit determinations, early retirement factors, money purchase benefit calculations, and service purchases, the actuary will:

- (a) assume a 1.5% GABA rate for future years; and
- (b) establish new actuarial equivalent factors effective January 1, 2014

following the fiscal year 2013 actuarial valuation.

(2) The 1.5% GABA rate established in (1)(a) is prospective only. Optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases implemented prior to July 1, 2013, will not be affected.

(3) Prior to January 1, 2014, MPERA will work with members regarding the options available to them regarding optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases.

(4) In the event of a court order prohibiting the board from implementing a 1.5% GABA rate pursuant to 19-3-1605, MCA, the actuary will assume a GABA rate consistent with the court order for purposes of this administrative rule until the court order is amended or lifted.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for determining actuarial equivalent factors used for calculating various actuarially-equivalent benefits and the cost of various service purchases. The GABA rate is an important assumption in these calculations.

Chapter 390, Laws of 2013 establishes a GABA with 0% floor and a 1.5% ceiling, together with contribution and funding triggers designed to amend the GABA in

increments of one tenth of one percent. Actuarial valuations based on assumptions that change based on other assumptions are not as reliable as valuations based on established assumptions. The Board has determined to use the ceiling of 1.5% because it will result in the largest possible liability, and the highest average service purchase cost, thus assuring the legislative goal of bringing the system to a position of actuarially sound funding.

Subsections (2) and (3) are necessary as the Board has been contacted by members concerned that their prior service purchases were based on assumptions that are no longer true.

Subsection (4) is necessary as the Board has been advised that a lawsuit challenging the constitutionality of a decreased GABA rate is pending and that the plaintiffs would be seeking an injunction to prevent implementation of the new GABA rate pending resolution of the lawsuit

NEW RULE III APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING THE AMOUNT OF COAL SEVERANCE TAX AND INTEREST INCOME STATUTORILY APPROPRIATED TO THE PERS DEFINED BENEFIT PLAN TRUST FUND (1) For purposes of determining the annual amount of coal severance tax and interest income from the coal tax severance permanent fund that will be statutorily appropriated to the PERS defined benefit plan trust fund, the actuary will rely on information provided by the Office of Budget and Program Planning.

AUTH: 19-2-403, MCA  
IMP: 19-2-405, MCA

STATEMENT OF REASONABLE NECESSITY: Sections 1 and 2, Chapter 390, Laws of 2013 provide for payment of an unknown amount of coal severance tax funds and a maximum amount of interest income from the coal severance tax permanent tax fund. The exact amount of those statutory appropriations must be provided to the Board so that its actuary can include those amounts in the annual PERS actuarial valuation. The Office of Budget and Program Planning has indicated that it will provide this information as needed.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kris Vlastic, Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0513; telephone (406) 444-2578; fax (406) 444-5428; or e-mail [kvladic@mt.gov](mailto:kvladic@mt.gov), and must be received no later than 5:00 p.m., September 23, 2013.

5. Kris Vlastic, Public Employee Retirement Administration, has been designated to preside over and conduct this hearing.

6. The Public Employee Retirement Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4. above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA apply and have been fulfilled. The primary bill sponsor was contacted by mail on May 21, 2013 and July 31, 2013.

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Melanie Symons  
Melanie Symons Legal Counsel  
and Rule Reviewer

/s/ Scott Moore  
Scott Moore  
President  
Public Employees' Retirement Board

Certified to the Secretary of State August 12, 2013