

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

| | | |
|--|---|---------------------------|
| In the matter of the adoption of |) | NOTICE OF ADOPTION OF |
| Temporary Emergency Rules I |) | TEMPORARY EMERGENCY RULES |
| through IV that establish criteria to be |) | |
| used by the Board's 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. The Montana Public Employees' Retirement Board is adopting the following emergency rules because sections 3, 4, 5, 6, and 7, Chapter 390, Laws of 2013, require the Board's actuary to provide important actuarial analyses of the Public Employees' Retirement System as part of its actuarial valuation of the system for fiscal year 2013. In addition to the yearly actuarial valuation of the system, the actuary must determine amortization periods and funding level percentages based in part on guaranteed annual benefit adjustment (GABA) rates that, under Chapter 390, Laws of 2013, are fluctuating and uncertain; and on contribution increases which are subject to triggers impacted by those fluctuating and uncertain GABA rates. The FY 2013 valuation will commence in July 2013, prior to the time in which the necessary rules could be adopted through the regular rulemaking process.

The rules are necessary to provide direction to the actuary regarding assumptions required for determining accurate and helpful valuations, including projections of amortization periods and funding level percentages. The rules will also assist the actuary in establishing yearly GABA rates and providing actuarial equivalent factors to be used for calculating money purchase retirement benefits, early retirement reductions, optional benefits, and the cost of various service purchases.

2. The Montana 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 Montana Public Employees' Retirement Administration no later than 5:00 p.m. on July 1, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employees' Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service/etc. (406) 444-1421; or e-mail kvladic@mt.gov.

3. The temporary emergency rules will be effective July 1, 2013.

4. The text of the temporary emergency rules provide as follows:

RULE I APPLICATION OF ACTUARIAL ASSUMPTIONS FOR TESTING PURPOSES (1) For purposes of determining the PERS funding level percentage referenced in 19-3-1605(5)(a), MCA (2013), the actuary will:

- (a) assume a GABA percentage rate of 1.5% for future years;
- (b) assume the actuarial value of the assets; and
- (c) set the funding percentage rounded to the nearest whole number.

(2) For purposes of determining the amortization period referenced in 19-3-1605(5)(b), MCA (2013), the actuary will:

- (a) assume a GABA percentage rate of 1.5% for future years; and
- (b) assume the actuarial value of the assets.

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 implementing Chapter 390, Laws of 2013. The actuary must determine the PERS funding percentage and the amortization period in order to set a GABA rate. However, the assumptions used to determine both the funding percentage and the amortization period include an established GABA rate. Actuarial valuations based on assumptions that change based on other assumptions are not as reliable as valuations based on established assumptions. Thus an initial GABA rate is necessary to start the calculations.

The current 3% GABA is significantly higher than future GABAs and would result in a significantly greater unfunded liability and longer amortization period than actually exists under a reduced GABA. Chapter 390, Laws of 2013 establishes a GABA with a 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. The Board has established the assumption of 1.5% for the testing GABA rate because, as the highest possible GABA under Chapter 390, Laws of 2013, it will result in the largest possible reasonable liability, thus assuring the legislative goal of bringing the system to a position of actuarially sound funding.

The Board has determined to use the actuarial value of assets rather than the market value of assets as the actuarial value of assets is the industry-accepted standard and is currently relied on when conducting annual actuarial valuations for all retirement systems administered by MPERA.

The Board has determined to set the funding percentage as a whole number to facilitate its decision in Rule II below to only reduce the GABA for each full 2% the funding percentage is below 90%.

RULE II 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% ($90\% - 80\%/2 = .5\%$; $1.5\% - .50\% = 1.0\%$).

Sections (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 (2013).

RULE III 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 continue assuming a 3% GABA rate 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.

Sections (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.

Section (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.

RULE IV 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 reports provided to the board by the Office of Budget and Program Planning.

(2) The report provided to the board pursuant to (1) will be available on the board's web site on or before July 31 of each applicable year.

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 to the Board as needed.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rules.

6. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Roxanne Minnehan at the address above.

7. The Montana Public Employees' Retirement Board 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 2 above or may be made by completing a request form at any rules hearing held by the Montana Public Employees' Retirement Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

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

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

Certified to the Secretary of State June 10, 2013

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

| | | |
|--------------------------------------|---|--------------------------|
| In the matter of the adoption of |) | NOTICE OF ADOPTION OF A |
| Temporary Emergency Rule I and the |) | TEMPORARY EMERGENCY RULE |
| temporary emergency amendment of |) | AND TEMPORARY EMERGENCY |
| ARM 2.43.2114 regarding increased |) | AMENDMENT OF A CURRENT |
| PERS employer contributions paid on |) | RULE |
| behalf of University employees who |) | |
| elect to participate in the Optional |) | |
| Retirement Program rather than in |) | |
| the Public Employees' Retirement |) | |
| System |) | |

TO: All Concerned Persons

1. The Montana Public Employees' Retirement Board is adopting the following emergency rule and amending ARM 2.43.2114 because Chapter 390, Laws of 2013, does not indicate where the additional PERS employer contributions provided for in section 4 of Chapter 390, Laws of 2013 and paid to University employees who elect to participate in the University Systems' Optional Retirement Program are to be allocated. The additional employer contributions commence on July 1, 2013, prior to the time in which the necessary rule could be adopted through the regular rulemaking process.

2. The Montana 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 Montana Public Employees' Retirement Administration no later than 5:00 p.m. on July 1, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vlastic, Montana Public Employees' Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service/etc. (406) 444-1421; or e-mail kvlastic@mt.gov.

3. The temporary emergency rules will be effective July 1, 2013.

4. The text of the temporary emergency rule provides as follows:

RULE I ALLOCATION OF ADDITIONAL EMPLOYER CONTRIBUTIONS ON BEHALF OF MONTANA UNIVERSITY SYSTEM EMPLOYEES IN THE OPTIONAL RETIREMENT PROGRAM

(1) The additional employer contributions provided for in 19-3-316(3), MCA that are paid on behalf of MUS employees in the optional retirement program will be allocated as follows:

(a) The 1.00% additional employer contribution will be directed to the PERS defined benefit plan trust fund.

(b) The 0.27% additional employer contribution is already allocated to the PERS defined benefit retirement plan's plan choice rate pursuant to 19-21-214(2)(b), MCA.

(c) The 0.1% additional employer contribution that commences July 1, 2014, will be directed to the PERS defined benefit plan trust fund unless the board determines pursuant to 19-3-2121, MCA that an increase in the plan choice rate is required to actuarially fund the PERS defined contribution retirement plan's share of the PERS defined benefit's plan unfunded liability. In that event, the 0.1% additional employer contribution will be directed to the PERS defined contribution retirement plan's plan choice rate.

AUTH: 19-2-403, 19-3-2104, MCA

IMP: 19-3-2104, MCA

STATEMENT OF REASONABLE NECESSITY: Section 6, Chapter 390, Laws of 2013 amends 19-3-2117, MCA to allocate the additional employer contributions paid on behalf of PERS defined contribution retirement plan members. Unfortunately, there is no allocation for MUS employees in PERS-covered positions who elect to participate in the Optional Retirement Program (ORP) rather than either the PERS defined benefit retirement plan or the PERS defined contribution retirement plan. Section 19-21-214, MCA instructs the Board regarding payment of employer contributions to the ORP. That statute is silent regarding the additional employer contributions provided for in Section 4, Chapter 390, Laws of 2013. However, 19-21-214(3), MCA provides that employer contribution allocations are subject to adjustment by the Board provided the adjustments are consistent with 19-3-2121, MCA.

Section 19-3-2121, MCA allows the Board to use employer contributions to increase the plan choice rate contribution under certain circumstances. If those circumstances are met, the Board has determined it to be appropriate to allocate the 0.1% increase to the plan choice rate. If the circumstances are not met, the 0.1% increase will go to help the defined benefit retirement plan's unfunded liability.

The Board will ask the 2015 Legislature to amend 19-21-214, MCA to address the allocation of the additional employer contributions on behalf of MUS employees in PERS-covered positions who elect to participate in the ORP. The Board will propose to the 2015 Legislature that the allocation mirror that in 19-3-2117, MCA for PERS Defined Contribution Retirement Plan members.

5. The text of the temporary amendment of an existing rule provides as follows:

2.43.2114 REQUIRED EMPLOYER REPORTS (1) through (5) remain the same.

(a) Commencing July 1, 2013, MUS shall transmit to MPERA the 1.0% additional employer contribution provided for in Chapter 390, Laws of 2013.

(b) Commencing July 1, 2014, MUS shall also transmit to MPERA the 0.1% additional employer contribution provided for in Chapter 390, Laws of 2013.

(6) remains the same.

AUTH: 19-2-403, MCA

IMP: Section 4, Chapter 390, Laws of 2013, 19-20-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2117, 19-7-1101, MCA

STATEMENT OF REASONABLE NECESSITY: Section 19-21-214, MCA allocates the current 0.27% additional employer contribution to the PERS defined benefit plan to eliminate the plan choice rate unfunded actuarial liability. However, Chapter 390, Laws of 2013 does not address the allocation of the additional employer contributions paid by MUS on behalf of employees in covered PERS positions who elect to participate in the ORP. Therefore, this amendment is necessary to ensure that MUS transmits the new additional employer contributions to MPERA for proper accounting.

6. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Roxanne Minnehan at the address above.

8. The Montana Public Employees' Retirement Board 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 2 above or may be made by completing a request form at any rules hearing held by the Montana Public Employees' Retirement Board.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/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 June 10, 2013

Bohyer, Dave

Subject:

FW: SAVA Update: 6-19-2013 PERB Board Meeting re Emergency Rules

From: Aldrich, Ginger

Sent: Thursday, June 20, 2013 1:43 PM

To: Scurr, Sheri; Hom, Fong; Rep. Blyton (j.blyton@aol.com); 'Rep. Bryce Bennett'; Rep. Doug Kary (dougekary.hd48@gmail.com); 'Rep. Swanson'; Sen. Dee Brown ; Sen. Jent; Sen. Lewis; Sen. Sue Malek (senatormalek@gmail.com)

Cc: Triem, Joe; Carlson, Amy; Johnson, Julie; Bohyer, Dave; Fox, Susan

Subject: SAVA Update: 6-19-2013 PERB Board Meeting re Emergency Rules

Dear SAVA members,

The Public Employees Retirement Board's Legislative Committee met yesterday to discuss the letter they received from the LFC committee last week and their potential actions. The Board considered the attached letter, drafted by their attorney in response to LFC's letter, but decided not to take action on the proposed letter until the entire board meets. They will likely meet on the 26th to take action on the letter.

At issue is the effects of the actuarial valuation, which, if taking the effects of HB 454 under historical actuarial practices, is projected to drop the amortization period below 25 years, thereby ending the 1% employee and employer contributions on Jan. 1, 2014. PERS would then likely be under 90% funded (projected to be about 78% funded), thereby dropping the GABA to approximately .9%, also on January 1. While the GABA fluctuates annually, HB 454 permanently terminates employer/employee increases once the system amortizes in under 25 years according to the valuation. Other proposals for the actuarial valuation using different considerations designed to keep the 1% employer and employee contributions in effect after Jan. 1, 2014 would likely drop the sliding GABA further below the current projected .9% (Ms. Symmons projected a .4% GABA if the employer/employee contributions continue but the coal tax money, etc. under HB 454 are not taken into account).

In response to LFC's objection to the actuarial valuation taking into account the effects of HB 454 as of July 1st forward, the PER Board's attorney informed them that the actuary stated that under Actuarial Standard of Practice No. 41, he could take into account alternative valuation assumptions only if he received written direction to do so and that it would relieve him of liability from the actuarial valuation. As the attached letter shows and in the discussion yesterday, the Board seemed reluctant to use this type of valuation, citing historical actuarial standards, liability, and their fiduciary responsibility; however, they did discuss and consider a variety of proposed alternatives, including the possibility of doing two actuarial valuations to consider the law in effect after July 1 (pursuant to 454) and another valuation if a court-ordered injunction restores GABA for current retirees to 3%. It is not clear whether they will direct their actuary to prepare more than one valuation at this point. Their attorney recommended that they wait to prepare an alternative valuation until an injunction is issued.

Please find AP and Gazette versions of the meeting in the attached articles:

http://billingsgazette.com/news/state-and-regional/montana/montana-legislative-mistake-could-gut-pension-fix/article_212c557b-5557-5089-9d4e-0e5ef9e11d55.html

<http://www.greatfallstribune.com/viewart/20130619/NEWS01/306190024/Legislative-mistake-could-gut-pension-fix>

We will continue to update you as events progress. If you have any questions, please do not hesitate to contact me.



PERB Letter.pdf

With regards,

K. Virginia ("Ginger") Aldrich
Legislative Attorney
Montana State Legislature
(406)444-4464

"Law is the public conscience." – Thomas Hobbes, Leviathan



LEGISLATIVE FINANCE COMMITTEE

63rd Montana Legislature

Room 110 Capitol Building * P.O. Box 201711 * Helena, MT 59620-1711 * (406) 444-2986 * FAX (406) 444-3036

SENATE MEMBERS

MARY CAFERRO
LLEW JONES
RICK RIPLEY
JON SESSO
MITCH TROPILA
EDWARD WALKER

HOUSE MEMBERS

DUANE ANKNEY
ROB COOK
KIMBERLY DUDIK
STEVE GIBSON
GALEN HOLLENBAUGH
PAT NOONAN

JULIE JOHNSON, Staff Attorney
DIANE MCDUFFIE, Secretary
AMY CARLSON, Director

June 12, 2013

Public Employee's Retirement Board
100 N. Park, Suite 200
P.O. Box 200131
Helena, MT 59620-0131

Dear President Moore and Members of the Public Employees' Retirement Board,

In testimony before the Legislative Finance Committee (LFC) on June 11, 2013, Ms. Melanie Symons of the Montana Public Employees Retirement Administration (MPERA) explained in detail the temporary emergency rules the Public Employees' Retirement Board has adopted for the upcoming implementation of HB 454. Based upon the content of this presentation, the LFC expresses serious reservation with the Board's interpretation of the legislative intent of the provisions in HB 454 and requests that the Board repeal or withdraw its rule (MAR Notice No. 2-43-478) to provide direction to the actuary regarding assumptions required for its actuarial valuation of the Public Employees' Retirement System (PERS) as of June 30, 2013.

First, the LFC does not believe that the temporary emergency rules contained in MAR 2-43-478 address "an imminent peril to the public health, safety, or welfare". Nevertheless, section 2-4-303(1)(a), MCA, requires an agency to make a finding of "an imminent peril to the public health, safety, or welfare" when it adopts "a rule upon fewer than 30 days' notice". Section 2-4-303(1)(a), MCA, provides further that "[b]ecause the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse." In the adoption notice MPERA states: "The rules are necessary to **provide direction to the actuary** regarding assumptions required for determining accurate and helpful valuations, including projections of amortization periods and funding level percentages." MAR 2-43-478, p. 1, ¶ 2 (emphasis added). It is the position of the committee that providing direction to the actuary is not a topic that addresses "an imminent peril to the public health, safety, or welfare".

Second, the LFC believes that the 63rd Legislature's intent and understanding when it enacted HB 454 was that the actuarial valuation for PERS as of June 30, 2013, would be based on the laws in effect on that date. The Legislature enacted HB 454 specifically to address the fact that based on the June 30, 2012, actuarial valuation, PERS' unfunded liabilities did not amortize and that the actuarial assumptions would not change until **after** HB 454 became effective on July 1, 2013. Thus, the Legislature did not expect that the reduction in the Guaranteed Annual Benefit

Adjustment or the provisions that terminate the contribution increases contained in HB 454 would be implemented in a circular manner by having the actuary assume that HB 454 was in effect for the purposes of the June 30, 2013, actuarial valuation.

For these two reasons, the LFC requests that the Board: (1) repeal its temporary emergency rules providing instructions to its actuary concerning the actuarial assumptions to be used for implementation of HB 454; (2) instruct the PERS actuary to conduct its actuarial valuation as of June 30, 2013, based only on the laws in effect on June 30, 2013; and (3) inform the LFC and the State Administration and Veterans' Affairs Interim Committee of the Board's final decision and actions with respect to these rules, any instructions to its actuary, and the reasons for the Board's decision.

Sincerely,



Sen. Llew Jones, Presiding Officer
Legislative Finance Committee



Rep. Galen Hollenbaugh, Vice-Presiding Officer
Legislative Finance Committee

cc
SAVA members
Ginger Aldrich
Sheri Scurr

PROPOSED RESPONSE (DRAFT ONLY)

June 19, 2013

Senator Llew Jones, Presiding Officer
Representative Galen Hollenbaugh, Vice-Presiding Officer
Legislative Finance Committee
Room 110 Capitol Building
P O Box 201711
Helena MT 59620-1711

Dear Senator Jones and Representative Hollenbaugh:

The Public Employees' Retirement Board (Board) has received the June 12, 2013 letter from the Legislative Finance Committee (LFC) requesting the Board to repeal or withdraw its temporary emergency rules contained in the Montana Administrative Register 2-43-478. While the Board appreciates the LFC's concerns, the Board will not be honoring the request to repeal the temporary emergency rules.

Following discussion at the June 13, 2013 Board meeting and input from the Board's actuary, the Board's Legislative Committee made the following determinations at its June 19, 2013, meeting.

First, the Board has previously determined the rules to be necessary to address "an imminent peril to the public health, safety, or welfare" as required by § 2-4-303(1)(a), MCA. Specifically, HB 454, along with the Board's next actuarial valuation of PERS, will impact the guaranteed annual benefit adjustment (GABA) paid to current retirees, as well as the contribution rates paid by members of PERS and their employers. The Board's Legislative Committee agrees and reaffirms that determination. There are nearly 19,000 retirees or beneficiaries whose expected retirement benefit will be significantly impacted. Additionally, over 28,000 active PERS members and 538 employers will see their respective PERS contributions increased by a full percent. Since the FY13 PERS actuarial valuation plays an important role in determining the GABA and the contribution rates, it is vital that the actuary's request for direction regarding perceived ambiguities be addressed prior to commencement of the valuation. .

Second, HB 454 permanently reduces the GABA to a rate not to exceed 1.5%. It also increases the employee and employer contributions by 1% until a specific trigger occurs. The bill is clear and contains no ambiguity with respect to the triggers related to changes in the GABA and contribution rates going forward. Those triggers are based on information obtained through the

PROPOSED RESPONSE (DRAFT ONLY)

Sen. Llew Jones
Rep. Galen Hollenbaugh
June 19, 2013
Page 2.

annual actuarial valuations. MPERA staff has discussed with its actuary the LFC's request to use the laws in effect as of June 30, 2013 when conducting the FY13 valuation. According to the actuary, actuarial standards require the valuation to reflect the plan or statutes as they are written, both currently and going forward. If there are ambiguities, the actuary is to obtain an interpretation from the plan sponsor regarding the terms of the plan document or statutes. The temporary emergency rules provide that interpretation.

Standard of Practice #41 pertains to actuarial valuations conducted for public plans. That standard provides that if an entity directs the actuary to conduct the valuation in a specific manner other than as clearly provided, the actuary must state the source of the direction. If the actuary disagrees with the entity, he must include a statement in the valuation explaining why he disagrees. According to the Board's actuary, PERS actuarial valuations have historically always taken into account the effect of new laws on the plan. To do otherwise for FY13 would result in a Standard of Practice #41 statement from the actuary disagreeing with the instructions.

For the reasons stated above, the Board respectfully must decline LFC's request.

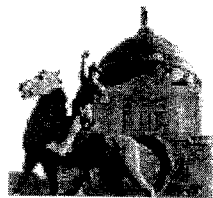
Sincerely,

Scott Moore
PERB President



BILLINGS GAZETTE

Montana legislative mistake could gut pension fix



2013

MONTANA
LEGISLATUREJUNE 19, 2013 5:44 PM • BY CHARLES S. JOHNSON
GAZETTE STATE BUREAU

HELENA — An attempt to modify the future impact of an error in a new pension law continued Wednesday, but wasn't resolved.

A subcommittee of the state Public Employees' Retirement Board postponed action Wednesday on a legislative committee's request to tell its actuary how to value the pension fund to prevent the unintended consequences from the error in the 2013 law.

Gov. Steve Bullock's office also weighed in Wednesday. Budget Director Dan Villa asked the board to have its actuary use a different time period and to conduct another evaluation, once, as expected, an injunction blocks part of the law from taking place.

The panel postponed a decision until the full Public Employees' Retirement Board can discuss it at a special meeting June 26.

At issue is a mistake in one of the major laws passed by the 2013 Legislature. The law was intended to fix the financially battered Public Employees Retirement System, or PERS, through a three-pronged approach: increased contributions from public employees and employers, lower cost-of-living raises for retirees and an infusion of millions of dollars in natural resources revenue.

The law goes into effect July 1. A group of retired public employees already has voted to challenge the law over the reductions in the cost-of-living increase, arguing it illegally impairs in their contractual rights.

Because of the late error made in April in a Senate committee, the matching 1 percent increases in the contributions by both employers and public employers will end after only six months. They go in place July 1 but will terminate Jan. 1, 2014, much sooner than anticipated.

However, scheduled cuts in the Guaranteed Annual Benefit Adjustment (GABA), the cost-of-living raises that retirees receive, would remain in place much longer than intended because of loss of money caused by the termination of the employer and employee contribution increases. The GABA drops from 3 percent to 1.5 percent on July 1, but can decrease further in increments of 0.1 percent to zero, depending on the pension fund's finances.

On Wednesday, Villa asked the legislative committee of the Public Employees Retirement Board to modify its plan and not have its actuary examine the fund for the fiscal year starting July 1 with the new law in place.

Last week, the Legislative Finance Committee asked the pension board to have its actuary examine the fund based only on the current law in effect June 30 and not the new law in place on July 1.

"The law as written is pretty clear as to what we're supposed to do," said Terry Smith, the PERB subcommittee chairman.

He said the board can't rewrite a state law and ask its actuary to violate his standards to produce a result the Legislature wants to happen.

Villa, however, asked how it would harm the system for the actuary to run the numbers as requested by the Legislature and administration to protect the retirees, with the understanding the 2015 Legislature would fix it.

But Melanie Symons, the pension's board's chief lawyer, said, if the actuary uses the 3 percent GABA instead of the 1.5 percent, it would actually drive the GABA down more, possibly to zero.

"I believe we could have a greater liability," she said.

Villa said the lawsuit challenging parts of the law is a certainty. He asked if there couldn't be an additional actuarial report done after the likely injunction halting the GABA reduction is in place.

There was also finger-pointing as to who was to blame for the error in the law.

Villa blamed the Legislature for the mistake.

However, state Rep. Rob Cook, R-Conrad, said afterward the mistake can be traced to an amendment provided by Villa.

Cook warned that the pension fund could be left in much worse financial shape if the additional contributions by employers and employees terminate after six months and a court stops the reduction of the GABA.

The end result, Cook said, could be that the Legislature would instead switch to a defined contribution retirement system like the 401(k) plans common in the private sector.

"Republicans won't support this twice," Cook said. He was referring to support from some Republicans that helped Democrats pass the pension bills sought by Bullock.

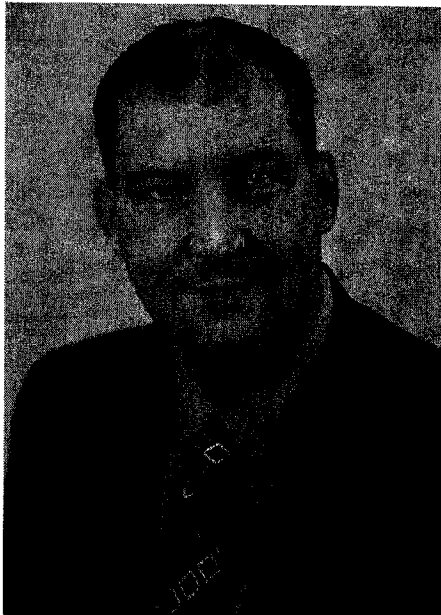
Administration officials said Bullock did not receive the bill until the Legislature had already adjourned. As a result, he wasn't able to propose an amendment to fix the error.

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Legislative mistake could gut pension fix

Jun. 19, 2013 | Comments

A A



Cook

Written by Matt Gouras Associated Press

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HELENA — A retirement board was told Tuesday that a mistake in the Legislature's proposed pension fix for public employees could undo plans to balance the system in less than 30 years.

The Public Employees Retirement Board is being asked to modify a rule in order to avoid a glitch that could leave the state's beleaguered pension system facing a huge shortfall.

Lawmakers struggled mightily to agree earlier this year on pension system fixes that rely on contribution increases and a cut to inflationary increases. Democrats barely pushed the legislation through amid a desire by many Republicans to end the various pension plans.

But lawmakers and others say the pension fix for public employees is now in trouble. They say the fix for the teachers' retirement system did not include the same mistake, and is unaffected.

Gov. Steve Bullock's office asked the Public Employees Retirement Board to modify plans for actuaries to analyze the impact of cutting inflationary increases for retirees. The board says it believes the move is legally required.

But the move is expected to show the system would balance in 30 years — and activate a trigger showing that employer and employee contribution increases are no longer needed.

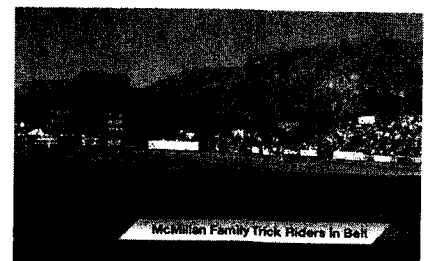
Lawmakers argue those increases were supposed to stay in place much longer — especially since the courts could also remove the fix's cut to inflationary increases as unconstitutional.

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The governor's office asked a board subcommittee Tuesday to alter its actuarial valuation to take into account the likelihood a lawsuit from retirees will remove the portion of the fix that reduces inflationary increases. That would leave the increased contributions in place.

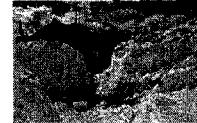
The panel said the full board would meet next week to consider the move — even though it worries the panel faces liability itself if it departs from law and generally accepted standards.

"Unfortunately, the Legislature did not make some of the changes that were requested by our staff prior to the session's close. It is my understanding they were forewarned of these issues," said PERB chairman Terry Smith. "This board can't violate our actuary standard of practice to come up with a result that the Legislature thinks was their intent to happen."

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Jun. 19, 2013 | Comments

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Written by **Matt Gouras**
Associated Press

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Bullock budget director Dan Villa said the board should alter its plan in order to buy time until the technical error could be fixed during the 2015 Legislature.

Villa pointed out that the administration's original legislation did not include the fix.

But Republican state Rep. Rob Cook, attending the meeting, interjected that the technical error was included in an amendment to the bill sought by the administration.

Cook said that the worst case scenario is that the timing of events throws out the increased contributions and the courts later throw out the inflationary increases — leaving the system again facing big shortfalls.

He said Bullock and other Democrats aren't likely to get support again from majority Republicans for a future fix. Many in the GOP are seeking to replace the pensions system with a less lucrative defined contribution plan similar to what is more common in the private sector.

"I don't think the board understands how serious the issue is," Cook said. "The public employees could end up with a defined contribution plan."

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Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee
FROM: K. Virginia Aldrich
DATE: May 28, 2013
RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans Affairs Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans Affairs Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans Affairs Committee and does not preclude additional action that may be taken by the State Administration and Veterans Affairs Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER:

TBD

AGENCY/BOARD:

Montana Public Employees' Retirement Board

RULE CLASSIFICATION: (e.g. substantive/interpretative/emergency/temporary)

Temporary Emergency

SUBJECT:

Temporary Emergency Rules Implementing HB 454

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice)

Notice of action on proposed temporary emergency rules

SUMMARY OF RULE(S):

The Montana Public Employees' Retirement Board is proposing to adopt temporary emergency rules implementing certain provisions of HB 454, which provides funding for the Public Employees' Retirement System.

MPERA is proposing to adopt temporary emergency rules to implement certain provisions of HB 454. HB 454 requires the Board's actuary to provide a yearly actuarial valuation of the system. In addition, the actuary must provide amortization periods, funding level percentages, and contribution increases tied to a guaranteed annual benefit adjustment (GABA) adjusted by HB 454 under certain triggers. MPERA proposes to adopt certain rules to provide direction to the actuary concerning assumptions for valuations, assist the actuary in establishing annual GABA rates, and help the actuary provide actuarial equivalent factors.

Specifically, to determine the PERS funding level percentage in 19-3-1605(5), MPERA proposes instructing the actuary to assume a GABA rate of 1.5% for future years, assume the actuarial value (rather than market value) of assets, and set the funding percentage rounded to the nearest whole number.

MPERA also proposes to adopt a rule applicable when the PERS amortization period is under 40 years reducing the 1.5% GABA in 19-3-1605(5) by .1% for each full 2 percentage points the funded percentage is below 90%, establishing a GABA expressed in tenths of a percent, and adjusting the GABA each year based on that year's PERS funding percentage.

MPERA proposes to adopt a rule to provide direction to the actuary regarding factors for calculating actuarially-equivalent benefits and the costs of various service purchases that assumes a 1.5% GABA rate for future years and establishes new actuarial equivalent factors effective January 1.

MPERA proposes to adopt a rule relying on Office of Budget and Program Planning reports to determine the annual amount of coal severance tax and interest income that will be statutorily appropriated.

Of the 1.27% additional employer contributions provided for in 19-3-316(3), MPERA proposes to adopt a rule to allocate 1.00 % of the additional PERS employer contributions to the PERS defined benefit plan trust fund and allocating the remaining .27% to the PERS defined benefit retirement plan's plan choice rate.

There are additional changes not discussed in this summary that may be of interest to legislators and the public. If you are interested in the full text of the proposed temporary emergency rules, please contact me for a copy of the full temporary emergency rules notice.

NOTES: (e.g. hearing dates)

A hearing is scheduled on the above referenced rules on May 28, 2013, at 1:00 p.m., in the MPERA conference room located at 100 N. Park Avenue, Helena, Montana.

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