

An Overview of the Development and Status of Montana's Public Employee Retirement Systems

Prepared for the
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BACKGROUND AND INTRODUCTION

Montana's public employee retirement systems have been a public policy issue on and off for more than 100 years. Initially, the issue was whether or not the state should assume administrative and fiduciary responsibility for various locally-established retirement plans. Subsequently, the issues focused on component parts of state-administered systems, including the scope of membership, whether participation should be mandatory or voluntary, the minimum requirements for vesting in system benefits, the minimum requirements for full retirement benefits, the advent of "early retirement" provisions, and the matter of the purchasing power of benefits paid to retirees from the systems.

The purpose of this report is to provide an overview of the development and status of Montana's state-administered retirement systems for public employees -- of which there are currently ten systems or plans.¹ The report presents the discussion of the systems generally in the order in which they appear in the Montana Code Annotated. An exception to that order is that the eight systems that provide for defined benefits are presented first, followed by the two systems that provide for defined contributions. The deferred compensation plan for which most public employees are eligible is presented last, although it is technically not a retirement system or plan.

Finally, this overview is not a comprehensive treatment of any of the systems or plans. Rather, it serves only to inform the reader of what the current systems look like in 2007 and provides some insights into how the systems came to be what they are.

¹ Not counted among the 10 state-administered systems are Social Security or Volunteer Firefighters Compensation.

**Public Employees' Retirement: Defined Benefit Plan
Title 19, chapter 3 (except part 21), MCA.**

Introduction

The Public Employees' Retirement System (PERS) is composed of two distinct retirement plans: the Defined Benefit (DB) plan and the Defined Contribution (DC) plan. The membership of the DB plan is composed, primarily, of all state and local government employees who are not members of one of the other retirement systems, including the PERS/DC plan.²

As of June 30, 2006, the DB plan counted nearly 28,000 active members, 9,700 inactive members, and 15,600 retirees and beneficiaries.³ The PERS DB plan membership constitutes approximately 1/3 of all members participating in Montana's defined benefit public retirement systems.

The PERS is governed by a 7-member board, the Public Employees' Retirement Board (PERB), whose members serve 5-year staggered terms. Three of the members must be active PERS members when appointed and one of the three must be a member of the PERS/DC plan. One board member must be a PERS retiree, two board members must be representatives of the public, and the final member must have "experience in investment management, counseling, or financial planning". All seven members are appointed by the governor, subject to confirmation by the Senate.⁴

Statutory provisions governing the TRS are codified in Title 19, chapter 20, MCA.

This section focuses on the PERS/DB plan and, unless noted otherwise, the narrative does not address the substance or the membership of the PERS/DC plan. The narrative is merely a cursory historical review of the evolution of the state-sponsored

² Membership in PERS is required for virtually all Montana public employees who are not members of another public employee retirement plan. There are a few civil services jobs a few elected offices for which membership in PERS is optional. The "default" membership is to the DB plan. Participation in the DC plan must be elected.

³ *Comprehensive Annual Financial Report* (for FY ending June 30, 2006); pub. by Public Employees' Retirement Board, prepared by Fiscal Services Bureau, Public Employee Retirement Administration, 2006, p.

⁴ Senate confirmation of PERB members applies to members appointed after March 27, 2007, a result of the adoption of Ch. 68, L.. 2007 (SB 72), which was requested by the 2005-06 State Administration and Veterans' Affairs Interim Committee.

retirement system in Montana for public employees who are not members of another public employee retirement system.

1945 - Public Employees' Retirement System

Ch. 212, L. 1945, established the Public Employees' Retirement System for "...employees of the State of Montana and all employees of such cities and counties (except city policemen, city firemen and Montana state highway patrol)... as may elect to include their employees pursuant to contract..."⁵

As stated in the law, the purpose of the act was "... to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and to that end providing a retirement system consisting of retirement compensation and death benefits".⁶

Every state employee hired after January 1, 1945, who had been employed by the state for at least 6 months of uninterrupted service by January 1, 1946, was required to join the system and every state employee hired prior to July 1, 1945, regardless of duration of employment, was eligible to opt out of the system.^{7,8} Upon becoming a member of the system, the employee:

- contributed a percentage of compensation determined by the board to be

⁵ Ch. 212, L. 1945, as stated in the title of the bill (House Bill No. 110 (1945)).

⁶ Section 1, Ch. 212, L. 1945. The language in HJR 59 (2007) commissioning the study of the state's public employee retirement systems directed the study committee to determine the "rationale" for the current retirement plan features of Montana's public employee retirement systems. The "purpose" section of Ch. 212, L. 1945, provides the original rationale.

⁷ A state employee hired prior to July 1, 1945, automatically became a member of the system, but could elect to not participate in the retirement system. A state employee who wished not to participate was required to file appropriate papers stating the desire to not participate. A state employee who wished to participate was not required to file anything, the default for then-current state employees being participation. The provisions of the law as applied to state employees applied in the same manner to the employees of cities, counties, and other political subdivisions that contracted with the state.

⁸ The act specifically excluded from participation: elected officers; inmates of state institutions; persons in state institutions principally for the purpose of training; independent contractors; eligible employees who elected not to participate; persons directly appointed by the governor; and persons who were active members of any other public [federal, state, or local] retirement system. Elected officers and gubernatorial appointees could opt into the system. (Sections 4 and 5, Ch. 212, L. 1945.)

actuarially sufficient to fund the employee's annuity payment.⁹ The Board was to set the employee contribution rate on the basis of the actuarial assets and liabilities of the retirement fund and other actuarial variables. It appears that there was no uniform contribution rate for employees; rather:

The normal rates of contribution of members shall be based on sex and the age at the nearest birthday at the time of entrance into the retirement system. The normal rates of contribution shall be such as will provide an average annuity at age 65 equal to one one hundred-fortieth of the final compensation of members... for each year of service rendered after entering the system. Nothing in this section shall prevent the adoption of one schedule of rates for males and one schedule for females.¹⁰

- became eligible for a retirement benefit after accruing 30 years of continuous service and attaining the age of 65 years or more.
- upon retirement under the above-stated service thresholds became entitled to receive a service retirement allowance composed of:
 - ▶ an annuity equal to the actuarial equivalent of the employee's accumulated contributions at the time of retirement;
 - ▶ a pension equal to that portion of the annuity purchased by the accumulated normal contributions of the member; and
 - ▶ an additional pension for non-university system members equal to 1/70 of the average annual compensation in the 3 years prior to retirement multiplied by the number of years of service.¹¹
- upon retirement of a member at age 70 or more, the member was entitled to a second additional pension, not to exceed \$480 per year, that would make the member's total retirement benefit equal to 1/2 of the member's final

⁹ Sections 14(j) and 18, Ch. 212, L. 1945.

¹⁰ Section 18(g), Ch. 212, L. 1945. The subsequent subsection 18(h) stipulated that the actual annuity was to be the actuarial equivalent of the member's accumulated contributions.

¹¹ A person who had accumulated 30 years of service but had not reached age 65 could also retire, but the "additional pension" would be reduced to the actuarial equivalent on the basis of the retiree's age compared to 65. The "additional pension" was also payable to university system members and members from contracting cities, but at somewhat different amounts than was payable to state employees.

compensation.

- upon retirement, was ineligible to be paid as an employee of any covered employer.

The employer of a member was required to contribute to the retirement fund 3% of the total compensation paid to the member.¹²

The language of the act implies that the objective of the retirement plan was to provide a total monetary benefit at full retirement, i.e., 30 years of service and age 65, equal to 1/2 of final compensation. Retirement with 30 years of service but prior to age 65 also appears to have been allowed, but with the retirement benefit reduced to reflect the actuarial consequences of retirement prior to age 65.

It also appears that a member could work more than 30 years or past the age of 65, but the additional years of work and contributions would not increase the member's retirement benefit.

While the PERS seemed to contemplate that members would normally retire at age 65 or older, it also established a mandatory retirement age of 75 years for the 5 years following enactment. Five years after enactment of Ch. 212, L. 1945, i.e., January 1, 1951, the mandatory retirement age was reduced to 70 years of age.

Since enactment in 1945 and like the TRS before it, the PERS has undergone numerous changes. Then as now, nearly every legislative session legislators revised public employees' retirement in one way or another. Some of the more substantive changes since 1945, listed in chronological order but not necessarily in any particular order of import, are listed below.

Year Change or Provision

1973 Chapter 323, L. 1973. Introduced as House Bill 548 in 1973, this act was a general recodification of Ch. 212, L. 1945, that established the Public Employees' Retirement System or PERS. The following elements were included among the provisions of the PERS, including amendments made during the intervening years between 1945 and 1973:

¹² The act capped at \$416.66 per month the maximum compensation upon which employer contributions were to be paid. (Sec. 36, Ch. 212, L. 1945.)

- A local government contracting with the PERS to include its local government employees in the system was authorized to specially levy for the employer contributions if the local government's general revenue was insufficient to pay the contributions.
- Retirement funds under the control of the Board of Administration (now known as the Public Employees' Retirement Board) were to be invested by the Board of Investments rather than by the Board of Administration as had been the case at enactment in 1945.
- The employee contribution rate increased to 5.75% of compensation.
- The employer contribution rate increased to 4.6% of compensation from July 1, 1973 through June 30, 1975, and then to 4.9% beginning July 1, 1975. Each of these rates was the sum of the "current service contribution rate" (a.k.a. normal cost rate) and an "unfunded liability contribution rate", but the precise amount of either rate was not specified.
- "Service retirement" eligibility, which means the retirement benefit is not subject to actuarial reduction, was loosened by allowing: (1) retirement after 10 years of service and minimum age of 60 years; (2) retirement at age 65 regardless of years of service; or (3) 30 years of service regardless of age. Eligibility in 1945 had been at least 30 years of service and age 65 minimum.
- An early retirement option was specified in the statute, i.e., a minimum of 10 years of service and minimum age 55. The retirement benefit would be actuarially reduced (in relation to age 60) for early retirement.
- Calculating the retirement allowance was a 5-step process, at least. For members of PERS entering creditable service after July 1, 1973, the allowance was composed of: (1) an annuity from the member's "accumulated additional contributions"; and (2) $1/65$ of the member's final average salary multiplied by the member's years of service. For members of PERS who had earned creditable service prior to July 1, 1973, there was an additional allowance composed of: (3) the greater of: (a) the sum of amounts determined by adding together: (i) the number of years of pre-July 1, 1973, creditable service multiplied by $1/65$ multiplied by the member's final average salary; plus (ii) the actuarial equivalent of the member's accumulated normal contributions; plus (iii) a pension equal in amount to the total of the amounts

determined under (3)(a)(i) and (3)(a)(ii); or (b) if the member was age 70 or older at retirement, the lesser of \$480 or 1/2 of the member's final average compensation.

- A retired member could resume covered employment, but the retiree's retirement benefits would cease.

Year Change or Provision

2007 Ch. 371, L. 2007:

- reduced the GABA for SRS from 3% to 1.5% for members new to the SRS after June 30, 2007. Members of SRS earning creditable service prior to July 1, 2007, continue to receive a 3% GABA; and
- increased the 2006 employer contribution rate (9.535%) on July 1, 2007, by 0.29% (to a total of 9.825%) and by 0.58% beginning July 1, 2009 (to a total of 10.115%).

**Judges
Title 19, chapter 5, MCA.**

Introduction

In contrast to some of the other retirement plans that had been established in the early- or mid-20th Century, the Judges' Retirement System (JRS) was created in the 1960s, 1967 to be precise.

Every district court judge and Supreme Court justice and the chief water judge is required to become a member of the JRS.¹³

A JRS member's benefits vest after 5 years of membership service in the JRS.

As of June 30, 2006, the JRS had 50 active members, 3 inactive members, and 51

¹³ A district court judge or Supreme Court justice in service on July 1, 1967, was eligible to become a member of the Judges' Retirement System on July 1, 1967. Additionally, any judge or justice who was, on July 1, 1967, a member of the Public Employees' Retirement System, was allowed to transfer membership from the PERS to the JRS. Sec. 7, Ch. 289, L. 1967, required a judge or justice to exercise his or her option to transfer from the PERS to the JRS by October 1, 1967. Transferring members would have to pay any additional costs associated with the transfer. Curiously, the statute did not speak to membership in JRS of judges or justices who came into service *after* July 1, 1967, but did not have prior service credited to the PERS.

retirees and beneficiaries.¹⁴ The JRS membership is the smallest, by number of members, of the state's public employee retirement plans, and comprises less than 1% of all members participating in Montana's defined benefit public retirement systems.

The JRS is governed by the 7-member Public Employees' Retirement Board (PERB). Statutory provisions governing the JRS are codified primarily in Title 19, chapter 5, MCA.

This section of the report focuses on the JRS plan and, unless noted otherwise, the narrative does not address the substance of other plans or the membership of any Judicial Branch employees who are not JRS-eligible, but who instead may participate in another of the public employee retirement systems.

1967 - Judges' Retirement System

The Judges' Retirement System (JRS) was established in 1967 with the enactment of Ch. 289, L. 1967. Originally administered by the 5-member Montana Judges' Retirement Board,¹⁵ the JRS provided for regular, disability, and involuntary retirement for members of the judiciary.

As of July 1, 1945, all then-serving judges and justices were given the option of becoming members of the JRS. Upon becoming a member of the system, the judge or justice:

- contributed 6% of salary to the system;
- became eligible to receive a retirement allowance after accumulating at least 5 years of JRS-creditable service and attaining the age of 65;
- became eligible for a maximum retirement benefit under the statutory formula equal to the members' accumulated contributions actuarially annuitized, plus a state annuity that equaled, when added together, the product of 3 1/3% of the member's final salary for each year of service up to a maximum of 15 years, and 1% of final salary for each year of service in excess of 15 years;
- became eligible for a disability retirement benefit and a benefit for involuntary

¹⁴ *Comprehensive Annual Financial Report* (for FY ending June 30, 2006); pub. by Public Employees' Retirement Board, prepared by Fiscal Services Bureau, Public Employee Retirement Administration, 2006, p.

¹⁵ The Judges' Retirement Board was composed of the same members as the Public Employees' Retirement Board. (Sec. 3, Ch. 289, L. 1967.)

retirement;¹⁶ and

- was subject to a significant penalty if the member did not apply for retirement benefits prior to age 70. The penalty was forfeiture of the judge's retirement benefits.

Since enactment in 1967, the JRS has undergone numerous changes. Nearly every legislative session legislators revise judges' retirement in one way or another. Some of the more substantive changes in recent years, listed in chronological order but not necessarily in any particular order of import, are listed below.

Year Change or Provision

1983 Ch. 524, L. 1983, among other things:

- ▶ increased the percentage of district court fees transmitted to the state from 60% to 68% and increased the percentage deposited in the JRS pension fund from 20% to 31%. Employing arithmetic indicates that 21.08% of district court fees were deposited to the JRS in July 1983, up from 12% immediately prior to the 1983 amendment. The 21.08% amount compares to the JRS as established in 1967 that required 25% of district court fees to be transmitted to the state and 25% of the transferred amount was credited to the JRS pension fund, i.e., 6.25% of district court fees was deposited in the JRS.
- ▶ increased the employee contribution rate from 6% to 7% of salary;
- ▶ changed the retirement benefit for a JRS member elected or appointed to office after July 1, 1983, and with a minimum of 12 years of service who involuntarily retired to take the member's actuarially adjusted retirement benefit.

Year Change or Provision

1987 Ch. 663, L. 1987, repealed the mandatory retirement age (70 years).

¹⁶ The benefit for involuntary retirement, which wasn't defined, appears to have been for a judge or justice who was not reelected to office. The benefit was a simple prorated benefit for regular retirement.

Year Change or Provision

1989 Ch. 664, L. 1989, increased the "multiplier" for JRS service in excess of 15 years from 1% of final compensation to 1.785% of final compensation.

Year Change or Provision

1991 Ch. 364, L. 1991. Added the chief water judge to the list of judges required to be members of the JRS.

Year Change or Provision

1993 Ch. 265, L. 1993:

- ▶ eliminated the requirement for a portion of the district court fees to be deposited to the credit of the JRS;
- ▶ reduced the employer contribution rate from 34.71% of compensation to 25.81% of compensation. The 1967 law had required an employer contribution of 6%, raised to 7% in 1983, of compensation (plus a portion of district court fees).

Year Change or Provision

1997 Ch. 287, L. 1997, was a general revision of the JRS and other retirement plans. Among the revisions to the JRS, Ch. 287:

- ▶ instituted a guaranteed annual benefit adjustment (GABA) of 1.5% annually for JRS retirees or beneficiaries. A retiree or beneficiary became eligible for the GABA in the first January following the retiree's or beneficiary's 36th retirement benefit payment;
- ▶ required the retirement benefit for members covered by the GABA to be calculated using "final average salary". The amount of the retirement of a JRS retiree electing not to choose the GABA was based on the "current salary" of the incumbent of the office from which the member retired.

Year Change or Provision

2001 Ch. 176, L. 2001, reduced the normal retirement age from 65 years to 60 years.
Ch. 149, L. 2001, increased the GABA percentage from "1.5%" to "3%".
Ch. 309, L. 2001, decreased commencement date of the GABA from 36 months

after retirement date to 12 months after retirement date.

Highway Patrol Officers Title 19, chapter 6, MCA.

Introduction

Not unlike some of the other public employee retirement plans that are sometimes identified as having been created in the 1970s, the Highway Patrolmen's Retirement System was established earlier than that, about a quarter-century earlier, in 1945. The system name was changed in 1989 to the Highway Patrol Officers Retirement System in recognition that the MHP included women officers and as part of a general gender-neutralization of the Montana Code Annotated.

All officers, including the supervisor and assistant supervisors, of the Montana Highway Patrol are required to become members of the HPORS.¹⁷ An HPORS member's benefits vest after 5 years of membership service in HPORS.

As of June 30, 2006, the HPORS had nearly 200 active members, 24 inactive members, and 280 retirees and beneficiaries.¹⁸ The HPORS plan membership is less than 1% of all members participating in Montana's defined benefit public retirement systems.

The HPORS is governed by the 7-member Public Employees' Retirement Board (PERB). Statutory provisions governing the HPORS are codified primarily in Title 19, chapter 6, MCA.

This section focuses on the HPORS plan and, unless noted otherwise, the narrative does not address the substance of other plans or the membership of any MHP employees who are not HPORS-eligible, but who instead may participate in another of the public employee retirement systems.

¹⁷ MHP employees who are not MHP officers are members of PERS.

¹⁸ *Comprehensive Annual Financial Report* (for FY ending June 30, 2006); pub. by Public Employees' Retirement Board, prepared by Fiscal Services Bureau, Public Employee Retirement Administration, 2006, p.

1945 - Highway Patrolmens' Retirement System

The Montana Highway Patrolmen's Retirement System (HPRS) was established in 1945 with the enactment of Ch. 37, L. 1945. Originally administered by a 5-member Montana Highway Patrolmen's Retirement Board, the HPRS provided for both regular retirement and disability retirement for members of the highway patrol.

As of July 1, 1945, all then-current members of the patrol were required to become members of the HPRS.¹⁹ Upon becoming a member of the system, the employee:

- contributed 3.5% of the member's monthly salary to the system. As employer, the state appropriated funds directly into the retirement fund. Added to the employer's contributions were all interest and income on the contributions. Notably, 10% of driver license fees collected, but not more than 7 1/2 cents per license, was also contributed to the HPRS, through June 30, 1954
- became eligible for service (full) retirement benefits upon completing 25 years of creditable service. Unlike the TRS and PERS, the HPRS did not have a minimum age at which members became eligible for service retirement. Service retirement was composed of two elements:
 - ▶ a member's annuity equal the actuarial value of the member's contributions at the time of retirement; and
 - ▶ a state annuity that, when added to the member's annuity, equals 1/2 of the member's final average salary.
- became eligible for voluntary (early) retirement upon completing at least 20 years of creditable service. The retirement benefit for voluntary retirement was calculated in the same manner as service retirement was calculated, except that the benefit would be reduced to its actuarial equivalent (proportionate to 25 years of service, age, etc.).
- was subject to compulsory retirement at age 60. The retirement benefit for a member with at least 25 years of service was the member's annuity amount from the member's contributions plus interest and earnings, plus a state annuity that, when added to the member's annuity amount, equaled 1/2 of the member's final

¹⁹ The then-current supervisor of the MHP was not required to become a member of HPRS but was given the option to become a member.

average salary. A member having less than 25 years of service received a retirement benefit equal to the member's annuity plus a state annuity in an equal amount, but adjusted to the present value of the state annuity at the time of retirement.

Since enactment in 1945, the HPORS nee HPRS has undergone numerous changes. Some of the more substantive changes in recent years, listed in chronological order but not necessarily in any particular order of import, are listed below.

Year Change or Provision

1977 Ch. 65, L. 1977. The statute was a general revision and recodification of the Highway Patrolmens' Retirement System that included mainly style and semantic revisions.

Year Change or Provision

1981 Ch. 206, L. 1981, reduced the minimum creditable service requirement for retirement on a service retirement allowance from 25 years to 20 years.

Year Change or Provision

1985 Ch. 86, L. 1985. Among the law's provisions was included the repeal of compulsory retirement at age 60.

Ch. 294, L. 1985. Section (1) of Ch. 294 established, by formula, a minimum monthly benefit for HPORS retirees equal to 2% of final salary multiplied the number of a retiree's years of service.

Chapters 278 and 294, L. 1985. These two statutes, in conjunction:

- initially increased the employee contribution rate from 6 1/2% to 6.59%, then from 6 1/2% to 7 1/2%, and ultimately from 7 1/2% to 7.59%; and
- initially increased the total employer contribution rate from 16.57% to 18.58%, then from 16.57% to 24.74%, and finally to 26.75%.

Year Change or Provision

1989 Ch. 217, L. 1989. The statute gender-neutralized the HPRS by replacing "patrolmen" with "patrol officer" and by similar revisions. As a result, the system

became the Highway Patrol Officers' Retirement System (HPORS).

Year Change or Provision

1991 Ch. 816, L. 1991. This statute, among other things:

- increased the employee contribution rate from 7.59% to 9% and the total employer contribution rate from 26.75% to 36.28%; and
- increased the retirement benefit from 2% of final salary to 2.5% of final salary (times years of service).

Year Change or Provision

1997 Ch. 287, L. 1997. Among other things, this law provided a guaranteed annual benefit adjustment of 1.5%, accompanied by an increase in the employee contribution rate from 9% to 9.05% for those choosing the GABA, and increased the total employer contribution rate from 36.28% to 36.33%.

Year Change or Provision

2001 Ch. 99 and 193, L. 2001, eliminated the minimum age requirement for service retirement, which had been 50 years.

Chapter 149 increased the GABA percentage from 1.5% to 3%.

**Sheriffs
Title 19, chapter 7, MCA.**

Introduction

The Sheriffs' Retirement System (SRS) was created in 1974 as a state-administered retirement system for, initially, the sheriffs, undersheriffs, and sheriffs' deputies of the state's counties. Since enactment in 1974, the SRS has also required membership by the original participants, plus every "detention officer" employed by a sheriff and all criminal investigators and gambling investigators employed by the Montana Department

of Justice.²⁰

A SRS member's benefits vest after 5 years of membership service in the SRS. The employee-member contributes 9.245% of his or her salary and the employer contributes 9.825% of salary through June 30, 2009, and 10.115% beginning July 1, 2009.

As of June 30, 2006, the SRS had 1,006 active members, 24 inactive members, and 282 retirees and beneficiaries.²¹ The SRS membership is relatively small by number of members compared to the state's two largest public employee retirement plans, but is approximately at the median among the 12 public employee retirement systems/plans administered by the state.

The SRS is governed by the 7-member Public Employees' Retirement Board (PERB). Statutory provisions governing the SRS are codified primarily in Title 19, chapter 7, MCA.

This section of report focuses on the SRS plan and, unless noted otherwise, the narrative does not address the substance of other plans or the membership of any employees who are not SRS-eligible, but who instead may participate in another of the public employee retirement systems.

1974 - Sheriffs'

The Sheriffs' Retirement System (SRS) was established in 1974 with the enactment of Ch. 178, L. 1974. Carved out from and distinguished from the Public Employees' Retirement System (PERS), the SRS was originally administered by the 5-member Sheriffs' Retirement Board,²² and provided for regular, disability, and involuntary retirement for members of the system.

As of July 1, 1974, all then-serving sheriffs', undersheriffs', and deputy sheriffs of the state's counties initially employed after July 1, 1974, became members of the SRS. A

²⁰ A sheriff, undersheriff, deputy sheriff, detention officer, criminal investigator, or gambling investigator who was a member of the Public Employees' Retirement System prior to the statutory requirement that a person in the office or position occupied by the member become a member of the SRS was grandfathered into the PERS, but had the option of transferring membership from PERS to SRS.

²¹ *Comprehensive Annual Financial Report* (for FY ending June 30, 2006); pub. by Public Employees' Retirement Board, prepared by Fiscal Services Bureau, Public Employee Retirement Administration, 2006, p.

²² The Sheriffs' Retirement Board was composed of the same members as the Public Employees' Retirement Board. (Sec. 3, Ch. 178, L. 1974.)

sheriff, undersheriff, or deputy sheriff who had previously earned membership and service credit in the PERS was given year-for-year credit for the prior PERS service.

As a member of the original SRS, a member:

- contributed 7% of salary to the system. Counties, as employers, contributed 7.55% of their respective members' salaries, and the state general fund paid for administering the SRS.²³
- became eligible to receive:
 - ▶ a full, service retirement allowance after accumulating at least 25 years of SRS-creditable service and attaining the age of 55;
 - ▶ an actuarially-reduced (prorated) retirement allowance after accumulating at least 20 years of SRS-creditable service and attaining the age of 55; or
 - ▶ a retirement allowance after accumulating at least 10 years of SRS-creditable service and attaining the age of 55 if the retirement was involuntary;
- became eligible for a retirement benefit under the statutory formula determined by multiplying the member's years of service by 2% and the product by the member's final salary. The benefit was capped at 50% of the member's final average salary.²⁴
- became eligible for a disability retirement benefit and a benefit for involuntary retirement;²⁵ and
- was subject to mandatory retirement at age 65 if appointed to a covered position. An elected sheriff was not subject to age-specific mandatory retirement.

Since enactment in 1974, the original SRS has undergone numerous changes. It is more likely than not that legislators will in any regular legislative session revise the retirement system for sheriffs in one way or another. Some of the more substantive

²³ Sec. 9, Ch. 178, L. 1974.

²⁴ The 50%-cap on the maximum benefit appears to have been for a member who accumulated 25 years or less of service credit. Under Section 8, Ch. 178, a member's "... retirement allowance shall be increased for any member who contributes after twenty-five (25) years of service, by an annuity calculated as twice the actuarial equivalent of the portion of the member's accumulated deductions arising from contributions after the completion of twenty-five (25) years of service."

²⁵ The benefit for "involuntary retirement", defined as "retirement not for cause and before retirement age", was earned by a member after 10 years of creditable service and the amount was determined simply by prorating the benefit that would have been paid for the member's regular retirement.

changes in recent years are listed below listed in chronological order, but not necessarily in any particular order of import.

Year Change or Provision

1981 Ch. 549, L. 1981, increased counties' contributions from 7.55% to 7.62%; and authorized a special county property tax.

Year Change or Provision

1985 Ch. 393, L. 1985, increased counties' contribution from 7.62% to 7.67%.
Ch. 86, L. 1985, repealed compulsory retirement at age 65.
Ch. 393, L. 1985, provided an *ad hoc* 5% increase in service, disability, or survivorship retirement allowance.

Year Change or Provision

1989 Ch. 122, L. 1989:

- reduced minimum tenure threshold for full retirement benefit from 25 years of service to 24 years;
- decreased minimum age threshold for full retirement benefits from 55 years to 50 years;
- in regard to early retirement from SRS:
 - ▶ decreased minimum number of years of creditable service to 15 from 20;
 - ▶ decreased minimum age to 50 years from 55 years;
 - ▶ decreased base payment years to 24 from 25; and
 - ▶ decreased base age to 60 years from 65 years.

Ch. 196, L. 1989, established that the retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 65th birthday.

Year Change or Provision

1991 Ch. 78, L. 1991, in determining the amount of retirement benefit, increased the multiplier rate from 2% to 2.0834% for each year of membership service.

Year Change or Provision

1993 Ch. 265, L. 1993, reduced the minimum years of service from 15 to 5 for early retirement. (Minimum age of 60 years was retained.)
Ch. 265, L. 1993, allowed a retired SRS member to return to SRS-covered employment for up to 60 days a year.

Year Change or Provision

1995 Ch 162, L. 1995:

- reduced the minimum number of years of years of service for full retirement benefits from 24 years to 20 years;
- repealed the minimum age (50 years) requirement;
- repealed the statutory maximum cap on the retirement benefit;
- increased the member contribution rate from 7% to 7.865%; and
- increased the employer contribution rate from 7.67% to 8.535%.

Year Change or Provision

1997 Ch 248, L. 1997:

- reduced the minimum number of years of service for full retirement benefits from 24 years to 20 years;
- reduced the minimum number of years of service for early retirement from 15 years to 5 years. (Minimum age of 50 years was retained.)
- increased the member contribution rate from 7.865% to 9.245%; and
- increased the employer contribution rate from 8.535% to 9.535%.

Ch. 370, L. 1997, repealed the requirement that an SRS member had to begin receiving the retirement benefit at age 65.

Ch. 287, L. 1997, provided a guaranteed annual benefit adjustment (GABA) of 1.5%, beginning a minimum of 3 years after retirement.

Year Change or Provision

2001 Ch. 149, L. 2001, increased the GABA percentage from 1.5% to 3%.
Ch. 309, L. 2001, decreased commencement date of GABA from 36 to 12 months.

Year Change or Provision

2005 Ch. 259, L. 2005 added detention officers to the membership of SRS.

Year Change or Provision

2007 Ch. 371, L. 2007:

- reduced the GABA for SRS from 3% to 1.5% for members new to the SRS after June 30, 2007. Members of SRS earning creditable service prior to July 1, 2007, continue to receive a 3% GABA; and
- increased the employer contribution rate (9.535%) on July 1, 2007, by 0.29% (to a total of 9.825%) and by 0.58% beginning July 1, 2009 (to a total of 10.115%).

**Game Wardens and Peace Officers
Title 19, chapter 8, MCA.**

Introduction

The Game Wardens' and Peace Officers' Retirement System (GWORS) was created in 1963 as the Game Wardens' Retirement System, but originally applied to only "... state fish and game wardens hired by the state fish and game commission... [including] supervisory personnel whose salaries or compensation is paid out of the Montana fish and game moneys..."²⁶ As the law currently reads, the GWORS now includes in its membership all of the following:

- game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;
- motor carrier officers employed by the department of transportation;
- campus security officers employed by the university system;
- wardens and deputy wardens employed by the department of corrections;
- corrections officers employed by the department of corrections;
- probation and parole officers employed by the department of corrections;
- stock inspectors and detectives employed by the department of livestock;
- motor vehicle inspectors employed by the department of justice; and

²⁶ Sec. 2, Ch. 130, L. 1963.

- drill instructors employed by the department of corrections.²⁷

A GWPORS member's benefits vest after 5 years of membership service in the GWPORS. The employee-member contributes 10.56% of his or her salary and the employer contributes 9% of salary.

As of June 30, 2006, the GWPORS had 793 active members, 111 inactive members, and 106 retirees and beneficiaries.²⁸ The GWPORS membership is relatively small by number of members compared to the state's two largest public employee retirement plans, but is approximately at the median among the 12 systems/plans.

The GWPORS is governed by the 7-member Public Employees' Retirement Board (PERB). Statutory provisions governing the GWPORS are codified primarily in Title 19, chapter 8, MCA.

This section of report focuses on the GWPORS plan and, unless noted otherwise, the narrative does not address the substance of other plans or the membership of any employees who are not GWPORS-eligible, but who instead may participate in another of the public employee retirement systems.

1963 - Game Wardens' Retirement System

The Game Wardens' Retirement System (GWRS) was established in 1967 with the enactment of Ch. 130, L. 1963. Carved out from and distinguished from the Public Employees' Retirement System (PERS), the GWRS was originally administered by the 5-member Montana State Game Wardens' Retirement Board,²⁹ and provided for regular, disability, and involuntary retirement for members of the system.

As of July 1, 1963, all then-serving "state fish and game wardens" and all fish and game wardens initially employed after July 1, 1963, became members of the GWRS. A game warden who had previously earned membership and service credit in the PERS was given year-for-year credit for the prior PERS service. As a member of the GWRS,

²⁷ See 19-8-103, MCA.

²⁸ *Comprehensive Annual Financial Report* (for FY ending June 30, 2006); pub. by Public Employees' Retirement Board, prepared by Fiscal Services Bureau, Public Employee Retirement Administration, 2006, p.

²⁹ The Montana State Game Wardens' Retirement Board was composed of the same members as the Public Employees' Retirement Board. (Sec. 4, Ch. 130, L. 1963.)

a member:

- contributed 7% of salary to the system;
- became eligible to receive:
 - ▶ a full, service retirement allowance after accumulating at least 25 years of GWRS-creditable service and attaining the age of 55;
 - ▶ an actuarially-reduced (prorated) retirement allowance after accumulating at least 20 years of GWRS-creditable service and attaining the age of 55; or
 - ▶ a retirement allowance after accumulating at least 10 years of GWRS-creditable service and attaining the age of 60;
- became eligible for a maximum retirement benefit under the statutory formula equal to the members' accumulated contributions actuarially annuitized, plus a state annuity that equaled, when added together, 1/2 of the member's final average salary;
- became eligible for a disability retirement benefit and a benefit for involuntary retirement;³⁰ and
- was subject to mandatory retirement at age 60.

Since enactment in 1963, the original GWRS and its successor, the GWPORS, have undergone numerous changes. It is more likely than not that legislators will in any regular legislative session revise the retirement system for game wardens and peace officers³¹ in one way or another. Some of the more substantive changes in recent years, listed in chronological order but not necessarily in any particular order of import, are listed below.

Year Change or Provision

1981 Ch. 549, L. 1981, increased employer's contribution from 7% to 7.15%.
Ch. 592, L. 1981, decreased number of years service needed from 25 years to 20 years.

³⁰ The benefit for "involuntary retirement", defined as "retirement not for cause and before retirement age", was earned by a member after 10 years of creditable service and the amount was determined simply by prorating the benefit that would have been paid for the member's regular retirement.

³¹ As used in the GWPORS, a "peace officer" does not include municipal police officers, sheriffs, deputy sheriffs, highway patrol officers, or firefighters.

Year Change or Provision

1985 Ch. 249, L. 1985:

- reduced the minimum retirement age from 55 years to 50 years; and
- increased the member's contribution rate from 7% to 7.9%.
- Ch. 86 eliminated compulsory retirement at age 60.

Year Change or Provision

1989 Ch. 139, L. 1989, established a minimum monthly retirement allowance of not less than 2% of a probationary warden's base monthly salary multiplied by the number of years of the retired member's service. The minimum benefit was capped at 60% of a probationary warden's base monthly salary.

Year Change or Provision

1993 Ch. 265, L. 1993, revised the retirement benefit formula by replacing the combination of the employee's and employer's annuities with a retirement allowance of 2% of the member's final salary for each year of creditable service.

Year Change or Provision

1995 Ch. 509, L. 1995:

- increased the employer contribution rate to 8.15% from 7.15%; and
- commissioned an interim study "... for equitable postretirement adjustments for all public retirement systems".

Year Change or Provision

1997 Ch. 223, L. 1997:

- expanded the membership of the Game Wardens' Retirement System to include other "peace officers",³² thereby compelling renaming the system as the Game Wardens' and Peace Officers' Retirement System; and
- reduced the vesting period from 10 years of service to 5 years of service.

³² The "peace officers" originally added to the GWPORS were: game wardens, motor carrier officers, university-campus security officers; wardens and deputy wardens; corrections officers; probation and parole officers; livestock inspectors and detectives employed by the department of livestock; motor vehicle inspectors; and drill instructors employed by the department of corrections.

Changing the vesting period also allowed early retirement after a minimum of 5 years of service rather than 10 years of service.

Ch. 287, L. 1997:

- provided a guaranteed annual benefit adjustment of 1.5%, applicable the first January coming at least 36 months after the member's retirement date.
- increased the member's contribution rate from 7.9% to 8.5% of salary; and
- increased the state contribution rate from 8.15% to 9%.

Year Change or Provision

2001 Ch. 98, L. 2001, increased the "multiplier" in the retirement benefit formula from 2% to 2.5% for each year of service.

Ch. 149, L. 2001, increased the GABA from 1.5% to 3%.

Ch. 309, L. 2001, decreased the commencement date of the GABA from 36 months to 12 months.

**Municipal Police Officers
Title 19, chapter 9, MCA.**

Introduction

The genesis of the statewide Municipal Police Officers' Retirement System (MPORS) can be traced to 1974 and the enactment of Chapter 335, Laws of Montana 1974. The 43rd Legislature established a state-administered retirement system for, initially, police officers of first- and second-class cities in Montana and the police officers of other Montana cities and towns whose governing body elected to participate in the system.³³

In relatively short order it became clear to legislators and perhaps others that there existed in Montana two distinct retirement systems for police officers: one for police officers in first and second class cities, primarily; and another for police officers in cities

³³ Under Section 15, Ch. 335, L. 1974, the term "police officers" included "... "policeman," "active police," "patrolman," or other similar terms denoting law enforcement officers under the Metropolitan Police Law...". In the context of "police reserves", a police officer also had to be any of or a combination of specifications for tenure, age, etc.

and towns that had established and were administering their own, local-only systems or that didn't provide a retirement benefit for police officers. By 1977 the 45th Legislature clarified state-administered police retirement provisions with the adoption of Ch. 456, L. 1977, and stated in the "purpose" section of the statute:

It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes local police retirement funds, applies to such cities, other than those of the first and second class, that wish to adopt it. The second, created by this chapter, applies to first- and second-class cities, those other cities that wish to adopt it, and any city that has adopted the above-mentioned statewide police reserve fund.³⁴

Thus, it was in 1977 that the 45th Legislature enacted the Municipal Police Officers' Retirement Act which established the MPORS that still exists in 2007, although with numerous revisions over the past 30 years.

Under the current MPORS, the membership of the system includes every police officer employed by a participating employer as a police officer on July 1, 1977, or first employed by a participating employer after July 1, 1977. A member's benefits vest after 5 years of membership service in the MPORS. The employee-member contributes a percentage of his or her salary and the amount of the contribution depends on the member's first date of employment as a police officer, as follows:

- (a) on or before June 30, 1975, is 5.8%;
- (b) after June 30, 1975, [but before July 1, 1979] is 7%;
- (c) after June 30, 1979, but before July 1, 1997, is 8.5%; and
- (d) on and after July 1, 1997, is 9%.³⁵

Similar to the other state-administered retirement systems, the employer -- a participating municipality in the case of MPORS -- contributes a percentage of police officers' compensation. The current percentage rate, set by statute, is 14.41% of

³⁴ See Section 33, Ch. 456, L. 1977.

³⁵ See 19-9-710, MCA.

compensation.³⁶ Additionally, the state contributes 29.37% of compensation.³⁷

As of June 30, 2006, the MPORS had 617 active members, 69 inactive members, and 580 retirees and beneficiaries.³⁸ The MPORS membership is relatively small by number of members compared to the state's two largest public employee retirement plans, but is approximately at the median among the 12 public employee retirement systems/plans administered by the state.

The MPORS is governed by the 7-member Public Employees' Retirement Board (PERB). Statutory provisions governing the MPORS are codified primarily in Title 19, chapter 9, MCA.

This section of report focuses on the MPORS plan and, unless noted otherwise, the narrative does not address the substance of other plans or the membership of any employees who are not MPORS-eligible, but who instead may participate in another of the public employee retirement systems.

1974 - Police Reserves List

Although the Municipal Police Officers' Retirement System (MPORS) was technically established in 1977 by Ch. 456, L. 1977, it was in effect a general revision of the retirement system established for police officers in 1974 with the enactment of Ch. 335, L. 1974. Carved out from and distinguished from the Public Employees' Retirement System (PERS) and various, locally-established systems, the 1974 MPORS was originally administered by the Department of Administration and the state Board of Retirement.³⁹ The MPORS provided for regular, disability, and compulsory retirement for members of the system.

As of July 1, 1974, membership in MPORS was required for all then-current police officers in first- and second-class cities and was optional for the police officers of all

³⁶ See 19-9-703, MCA.

³⁷ See 19-9-702, MCA.

³⁸ *Comprehensive Annual Financial Report* (for FY ending June 30, 2006); pub. by Public Employees' Retirement Board, prepared by Fiscal Services Bureau, Public Employee Retirement Administration, 2006, p.

³⁹ In case of granting a disability retirement, the governing body of the jurisdiction in which the member was employed functioned in a quasi-judicial role by determining whether or not the member was, in fact, disabled and, therefore, eligible for disability retirement.

other cities and towns, subject to election by the governing body of each respective city or town. As a member of the 1974 MPORS, a police officer contributed 6% of his or her salary to the system.⁴⁰ Participating cities, as employers, contributed 11% of their respective members' salaries.⁴¹

The terminology of retirement among the ranks of police officers was different from the other retirement systems of the day in that the term "reserve officer" was substituted for "retired member". Because the MPORS was cobbled together from the provisions of various local governments' retirement systems for police officers and from the provisions of then-existing state-administered retirement systems, the retirement benefit structure was somewhat convoluted.

Paraphrasing the 1974 statute, an MPORS member became eligible to be placed on the police reserves list, i.e., he or she became eligible for retirement benefits, upon:

- completion of 20 years of service as a police officer, if the member was employed as a police officer on July 1, 1975;⁴²
- completion of 20 years of service as a police officer and reaching age 50, if the member was initially employed as a police officer after July 1, 1975;
- reaching age 65;
- incurring a service-related injury or disability.

Under the 1974 MPORS, the retirement benefit for an officer placed on the reserves list was "...equal to one-half (1/2) the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service."⁴³

Since enactment in 1974 and general revision in 1977, the MPORS has undergone numerous changes. It is more likely than not that legislators will in any regular

⁴⁰ Sec. 7, Ch. 335, L. 1974.

⁴¹ Sec. 6, Ch. 335, L. 1974.

⁴² Under the law of contracts, a police officer who retired (was placed on the reserves list) from a participating city or town prior to July 1, 1975, received all benefits payable under the retirement provisions of the employing jurisdiction in effect at the member's time of retirement.

⁴³ Sec. 14, Ch. 335, L. 1974. A police officer could also an additional 1% of "highest salary" for each year of additional service, up to a maximum of 10 additional years or 10% of salary, for years worked in excess of 20 years or for years worked past the age of 65.

legislative session revise the retirement system for municipal police officers in one way or another. Some of the more substantive changes in recent years are listed below in chronological order, but not necessarily in any particular order of import.

Year Change or Provision

1977 Ch. 406, L. 1977, established a minimum retirement benefit for all MPORS retirees and beneficiaries at 50% of the salary of a newly confirmed officer in the municipality from which the member retired. An additional effect of this provision was to provide a growth factor in the benefit amount paid to retirees, accomplished through the labor contract negotiated at the local level by the police officers serving and the elected officials governing each participating jurisdiction.

Year Change or Provision

1981 Ch. 549, L. 1981, increased employer (municipality) contribution from 14% to 14.04% of compensation.

Year Change or Provision

1983 Ch. 661, L. 1983:

- increased the state contribution from 14.04% to 15.06% beginning July 1, 1985;
- decreased the employer (municipality) contribution from 14.04% to 13.02% beginning July 1, 1985.

Year Change or Provision

1985 Ch. 86, L. 1985, eliminated mandatory retirement at age 65.

Year Change or Provision

1989 Ch. 196, L. 1989, instituted a requirement that a member eligible for retirement (but not receiving retirement benefits) and terminated from service must begin receiving the member's retirement benefit at age 55.

Year Change or Provision

1991 Ch. 631, L. 1991:

- allowed for a prorated retirement benefit after 10 years of qualified service (and attaining age 50). Before the change, eligibility minimums were at least 20 years of service and minimum age 50; i.e., no "early retirement" provision.
- eliminated the minimum age requirement of 50 years old, so retirement eligibility was changed to 20 years service, regardless of age. (Before the change, the requirement thresholds were minimum 20 years service and minimum age 50.)
- maintained employee contribution rate at 6% for police officers hired prior to July 1, 1975;
- increased the employee contribution rate from 6% to 7.2% for MPORS members first employed as a police officer after June 30, 1975 and before July 1, 1979;
- increased the employee contribution rate from 7.5% to 8.7% for an MPORS member first hired after June 30, 1979;
- increased the state contribution rate from 15.06% to 15.66%;
- increased employer contribution from 13.02% to 13.92% after July 1, 1991.

Year Change or Provision

1993 Ch. 265, L. 1993, and Ch. 620, L. 1993, (which were coordinated):

- the survivorship benefit payable to the survivor of an MPORS member employed as a police officer who dies before retiring, increased to 50% of the member's final average salary;⁴⁴
- established a single employer contribution rate of 14.36% of compensation. (There had previously been three different rates, imposed on the basis of an MPORS member's first employment as a police officer.)

Ch. 522, L. 1993, and Ch. 620, L. 1993 (which were coordinated):

- increased the retirement benefit for members with more than 20 years of service;
- eliminated the cap on retirement benefits for members with more than 20

⁴⁴ The survivor benefit was previously calculated based on the member's years of service multiplied by 2.5% of the member's final average salary. The change was potentially a substantial increase to, e.g., a newly employed police officer killed in service.

- years of service; and
- to pay for increased benefits, increased the employee contribution rate:
 - ▶ from 6% to 7.8% for police officers employed prior to July 1, 1975;
 - ▶ from 7.2% to 9% for police officers hired after June 30, 1975, and before July 1, 1979;
 - ▶ from 8.7% to 10.5% for police officers hired after June 30, 1979 and before July 1, 1993.

Year Change or Provision

1997 Ch. 250, L. 1997:

- reduced the vesting period from 10 years of service to 5 years. The change also allowed a member to receive retirement benefits at age 50 after 5 years of service, rather than 10.;
- increased employer contribution rate from 14.36% to 14.41%.

Ch. 287, L. 1997:

- ▶ enacted a 1.5% guaranteed annual benefit adjustment (GABA) in the retirement benefit of all future (hired after June 30, 1997) police officers and made the 1.5% GABA optional for then-current MPORS members and then-current MPORS retirees and beneficiaries. The GABA was effective the first January following the 36th month of the member's retirement.
- ▶ clarified that a retiree subscribing to the 1.5% GABA was not subject to the provision guaranteeing a retirement benefit of at least 50% of a newly confirmed officer in the jurisdiction from which the retiree retired.
- ▶ established the employee contribution rate at 11% for police officers hired after June 30, 1997.

Ch. 370. L. 1997, eliminated the requirement that an inactive MPORS member must begin receiving retirement benefits at age 55.

Ch. 445, L. 1997, increase the state's contribution rate from 15.66% to 29.37%.

Ch. 532, L. 1997, established that the state's contribution be made from the state general fund and eliminated the requirement that the state's contribution be made from (earmarked) insurance premium taxes.

Year Change or Provision

1999 Ch. 463, L. 1999:

- enacted a 1.5% guaranteed annual benefit adjustment (GABA) in the retirement benefit of all future (hired after December 31, 1999) police officers and made the 1.5% GABA optional (irrevocable) for then-current MPORS members and then-current MPORS retirees and beneficiaries. The GABA was effective the first January following the 36th month of the member's retirement.
- decreased the employee contribution rate:
 - ▶ from 7.8% to 5.8% for police officers employed prior to July 1, 1975;
 - ▶ from 9% to 7% for police officers hired after June 30, 1975, and before July 1, 1979; and
 - ▶ from 10.5% to 8.5% for police officers hired after June 30, 1979, and before July 1, 1997; and
 - ▶ from 11% to 9% for police officers hired after June 30, 1997.

Year Change or Provision

2001 Ch. 99, L. 2001, allowed a person who is a member of the public employees' retirement system on the date of the employer's election to remain in the PERS or become a member of the MPORS.

Ch. 149, L. 2001:

- provided a second irrevocable election to participate in the GABA; and
- increased the GABA from 1.5% to 3% (for both GABAs).

Ch. 309, L. 2001, decreased the commencement date of the GABA from 36 after retirement date (for both GABAs) months to 12 months.

Ch. 391, L. 2001, provided a permanent, *ad hoc* increase designed to bring the benefit recipient's current benefit up to a level estimated to be no less than 75% of the purchasing power of the original recipient's initial monthly benefit.

Ch. 514, L. 2001, implemented a deferred retirement option plan or DROP.⁴⁵

⁴⁵ In its simplest terms, a DROP plan is an arrangement under which an employee who would otherwise be entitled to retire and receive benefits under an employer's defined benefit¹/ retirement plan instead continues working. However, instead of having the continued compensation and additional years of service taken into account for purposes of the defined benefit plan formula, the employee has a sum of money credited during each year of the continued employment to a separate account under the employer's retirement plan. The account earns interest (either at a rate stated in the plan, or based on the earnings of the trust underlying the retirement plan). The account is paid to the employee, in addition to whatever benefit the employee has acquired under the defined benefit plan based on

**Firefighters
Title 19, chapter 13, MCA.**

Introduction

The Firefighters' Unified Retirement system or FURS that exists today was officially enacted in 1981 as Ch. 566, L. 1981. It appears to have been modeled after the Municipal Police Officers' Retirement System, but also incorporated various aspects of previously existing systems or plans established for the retirement and disability, including death, of firefighters.

The purpose section of the FURS statute sheds some light on the rationale for the current retirement plan features,⁴⁶ although many questions remain.

19-13-102. Purpose -- application of prior law. (1) Because cities other than those of the first or second class currently have fire department relief associations, the legislature finds and declares that the law regarding these associations cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes fire department relief associations, applies to cities other than those of the first or second class that wish to adopt it. The second, created by this chapter, applies to cities of the first or second class and those other cities that wish to adopt it. The purpose of the second system is to provide equity and security for retired firefighters who served cities of the first and second class and other cities electing to join the plan by creating a centrally administered system responsible for continuing all retirement payments from the assets of the system.

(2) Title 19, chapter 18, may not be applied in any way to a city operating under the plan created by this chapter except as otherwise provided.⁴⁷

Under the current FURS, the membership of the system includes every firefighter employed by a participating employer as a firefighter on July 1, 1981, or first employed

earlier years of service, when the employee eventually retires. (See *Deferred Retirement Option Plans ("DROP" Plans)* by Carol V. Calhoun and Arthur H. Tepfer, October 13, 1998.

⁴⁶ "A concise summary of the rationale for the current retirement plan features of Montana's public employee retirement systems" is one of the requests set forth in HJR 59 (2007).

⁴⁷ The language in 19-13-102, MCA, was adopted in 1981 and has not been amended.

as a firefighter by a participating employer after July 1, 1981.⁴⁸ A member's benefits vest after 5 years of membership service in the FURS. The employee-member contributes a percentage of his or her salary: 9.5% for members who do not participate in the benefit option subject to a guaranteed annual benefit adjustment (GABA); and 10.7% for members who are required to or who elect to participate in the GABA.⁴⁹

Similar to the other state-administered retirement systems, the employer -- a participating municipality in the case of FURS -- contributes a percentage of firefighters' compensation. The current percentage rate, set by statute, is 14.36% of compensation.⁵⁰ Additionally, the state contributes 32.61% of compensation.⁵¹

As of June 30, 2006, the FURS had 467 active members, 74 inactive members, and 509 retirees and beneficiaries.⁵² The FURS membership is relatively small by number of members compared to the state's two largest public employee retirement plans, but is approximately at the median among the 12 public employee retirement systems/plans administered by the state.

The FURS is governed by the 7-member Public Employees' Retirement Board (PERB). Statutory provisions governing the FURS are codified primarily in Title 19, chapter 13, MCA.

This section of report focuses on the FURS plan and, unless noted otherwise, the narrative does not address the substance of other plans or the membership of any employees who are not FURS-eligible, but who instead may participate in another of the public employee retirement systems.

1899 -- Precursors to the Firefighters' Unified Retirement System

⁴⁸ Section 19-13-301, MCA, also provides optional membership for part-paid firefighters and waives the requirement for certain PERS-covered members who transfer into a FURS-covered position.

⁴⁹ Each member also contributes 1% of salary to the Montana state firemen's association "...for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the retirement system". (Section 19-13-601, MCA.)

⁵⁰ See 19-13-605, MCA.

⁵¹ See 19-13-604, MCA.

⁵² *Comprehensive Annual Financial Report* (for FY ending June 30, 2006); pub. by Public Employees' Retirement Board, prepared by Fiscal Services Bureau, Public Employee Retirement Administration, 2006, p.

The beginnings of the FURS can arguably be traced to 1899 and the enactment of House Bill No. 17, Laws of Montana 1899. Only 10 years after Montana achieved statehood, the Sixth Legislature authorized each municipality to establish a fire department. Each municipality that established a fire department was required to establish a "disability fund", to be used to compensate firemen⁵³ disabled in the line of duty only, i.e., there weren't any specific provisions for firefighters killed in the line of duty or who had worked as firefighters for years (until at least age 45 at which time they were forced into retirement). The source of revenue to pay for firefighters' disability benefits was premiums paid to insurance companies for insurance against property loss due to fire. Under the original plan, no contribution was required from the state, covered employers (municipalities), or firefighters. Nevertheless, HB 17, L. 1899, was a forerunner of more comprehensive plans for firefighter retirement, disability, and death.

In 1911, the law pertaining to firemen's relief funds was generally revised and expanded by the adoption of Ch. 129, L. 1911. Significant revisions and additions to the 1899 law included provisions for:

- the distribution of 25% of insurance premiums paid to insurance companies in Montana for fire insurance were to be transferred from the state to participating cities in the proportion that the premiums paid in the respective cities' bore to the total premiums collected statewide;
- a "service pension" for firefighters at least 50 years old with 10 years service with the jurisdiction or having served at least 18 years as a firefighter, the amount of the pension to be determined by the local governing body, but not more than 50% of a firefighter's [previous] salary;
- the amount of the pension which had to be uniform among all retirees from the jurisdiction and could be increased or decreased by the governing body on the basis of the amount of money received from the state (from fire insurance premiums);

⁵³ "Firemen", not "firefighter", is the term used in the law and in 1899, the force of a fire department was likely to be composed of men only. The law also lists as "qualifications of firemen": qualified voter of the city or town; less than 45 years of age; and having passed a physical examination by a practicing physician. (See Sec. 5, HB 17, p. 74, L. 1899.)

- a pension payable to "the widow and orphans of deceased firemen" ⁵⁴ not to exceed the monthly salary previously paid to the deceased fireman, which pension could be increased or decreased at the discretion of the governing body;
- the use of tax revenue generated by the local jurisdiction as a source of additional funding for firefighters' disability and pension benefits.

The FURS as enacted in 1981

Additional revisions and enhancements to the system's enabling statutes were made over the ensuing decades -- Ch. 66, L. 1919; Ch. 50, L. 1921; Ch. 58, L. 1927; Ch. 391, L. 1935, et al.--culminating in the 1981 establishment of the FURS. As established in 1981, the system:

- required all full-paid firefighters employed by first- and second-class cities to become members of the system and authorized part-paid firefighters and all other cities and towns to join FURS;
- established the Public Employees' Retirement Board as the administrator of FURS;
- provided that a FURS member became vested in the system upon completing 10 years of creditable service;
- required that the unfunded liability, if any, for firefighters' retirement of a participating city must be paid by the city;
- required each member to contribute 7% of compensation of which 6% was deposited to the retirement fund and 1% was transferred to the Montana state firemen's association for the payment of premiums on a group life, disability, and dismemberment insurance policy for firefighters;
- earmarked a portion of the state imposed and collected taxes on property/casualty insurance to pay the state's contribution to the FURS, which contribution rate was 12% of compensation from July 1, 1981 through June 30, 1982, 15% of compensation from July 1, 1982, through June 30, 1983, and 18% of compensation beginning July 1, 1983;
- established an employer (city) contribution of 12% of compensation from July 1,

⁵⁴ Sec. 10, Ch. 129, L. 1911.

1981 through June 30, 1982, 15% of compensation from July 1, 1982, through June 30, 1983, and 18% of compensation beginning July 1, 1983;

- authorized member cities to levy a special tax for firefighter retirement;⁵⁵
- established eligibility for retirement benefits after a minimum of 10 years of creditable service and attaining age 50;
- required mandatory retirement as a firefighter at age 65;
- established the retirement benefit:
 - ▶ for a FURS member hired before July 1, 1981:
 - ✓ if the member had at least 20 years of service and was at least 50 years of age at 50% of the member's final monthly compensation. A member who was at least 50 years of age and had more than 20 years of service received an additional 1% of final compensation for each year exceeding 20 years of service, capped at an additional 10% of final monthly compensation.
 - ✓ if the member had at least 10 years of service but did not have 20 or more years of service and was younger than 50 years of age at 2% of final compensation for each year of service, not to exceed 60% of final monthly compensation;
 - ▶ for a FURS member hired after June 30, 1981:
 - ✓ if the member had at least 10 years of service but did not have 20 or more years of service and was younger than 50 years of age at 2% of final compensation for each year of service, not to exceed 60% of final average salary;
 - ✓ and who had reached mandatory retirement age (65) at 50% of the member's final average salary, regardless of the number of years of service earned;
 - ✓ if the member had 20 years or more of service and had reached at least age 50 at 2% of final average salary for each year of service; and
- exempted from state and municipal taxation the retirement benefits received under FURS.

⁵⁵ Sec. 32, Ch. 566, L. 1981, allowed a city to levy a special tax for firefighter retirement only if the city had maximized its general taxing authority and the amount of revenue generated by the city's maximum levy was insufficient to cover the cost of firefighter retirement contributions.

The original provisions of FURS have been amended many times in the past 25 years. It is more likely than not that legislators will in any regular legislative session revise the retirement system for firefighters in one way or another. Some of the more substantive changes in recent years are listed below in chronological order, but not necessarily in any particular order of import.

Year Provision or Change

1983 Ch. 661, L. 1983:

- increased the state contribution rate from 18% to 22.98% effective July 1, 1985. The original 1981 statute phased in increases in the state contribution rate: 12% of compensation from July 1, 1981 through June 30, 1982; 15% from July 1, 1982, through June 30, 1983; and 18% beginning July 1, 1983.
- decreased the employer contribution rate from 18% to 13.02% effective July 1, 1985. As with the state contribution rate, the original 1981 statute phased in increases in the employer contribution rate: 12% of compensation from July 1, 1981 through June 30, 1982; 15% from July 1, 1982, through June 30, 1983; and 18% beginning July 1, 1983.

Year Provision or Change

1987 Ch. 191, L. 1987, clarified that a FURS member contributes 1% of salary to the Montana state firemen's association for group life and accident insurance premiums and 6% of salary to the FURS.

Year Provision or Change

1991 Ch. 617, L. 1991, increased state contribution rate from 22.98% to 23.27%.

Year Provision or Change

1995 Ch. 541, L. 1995:

- increased the multiplier variable from 1% to 2% of highest average compensation for years of service in excess of 20 years;
- eliminated the cap on the retirement benefit which had been a maximum benefit of 60% of final average compensation;

- increased the member's contribution rate from 6% to 7.8% of salary;
- increased the state's contribution from 23.27% to 24.21%;
- increased the employer's contribution from 13.02% to 14.36%.

Year Provision or Change

1997 Ch. 287 and Ch. 457, L. 1997 (coordinated):

- increased the multiplier variable from 2% to 2.5% of highest average compensation for each year of service;⁵⁶
- provided for an optional guaranteed annual benefit adjustment (GABA) of 1.5% beginning 36 months after retirement date;
- increased the member contribution from 7.8% of salary to:
 - 9.5% for a member not covered under the GABA; or
 - 10.7% for a member covered under the GABA.
- increased the state's contribution rate from 24.21% to 32.61% (coordination instruction).

Year Provision or Change

2001 Ch. 290, L. 2001, required firefighters hired by Montana air national guard to participate in FURS.

**Teacher's Retirement
Title 19, chapter 20, MCA.**

Introduction

Reference to the Teacher's Retirement System (TRS) and its predecessors often skirts the fact that the system membership is composed of not only teachers who work for school districts, but also principals, superintendents, and various other administrative staff of school districts, as well as to some educators and administrators within community college districts, state agencies, and the Montana university system.

With approximately 18,000 active members, some 10,000 inactive members, and

⁵⁶ This provision was coordinated with HB 170 (1997).

another 10,600 TRS retirees and beneficiaries, the TRS is, as measured by the number of members, second in size among Montana's 10 public retirement systems. Only the Public Employees' Retirement System, which covers most state and local government employees and most non-teacher/administrator employees of school districts, has a larger membership.

The TRS is governed by a 6-member board, the Teachers' Retirement Board, whose members serve 5-year staggered terms. Three of the members must be active TRS members when appointed and one of the three must be a classroom teacher. Two board members must be representatives of the public and the final member must be a TRS retiree-member. All six members are appointed by the governor, but none is subject to confirmation by the Senate.⁵⁷

Statutory provisions governing the TRS are codified primarily in Title 19, chapter 20, MCA.

The following narrative is a cursory historical review of the evolution of state-sponsored retirement systems in Montana for public school teachers'.

1915 -- Public School Teachers' Retirement Salary Fund

Although not commonly noted elsewhere, Chapter 95, L. 1915, enacted on March 8, 1915, established a Public School Teachers' Retirement Salary Fund and the Public School Teachers' Permanent Fund. Together, the two funds worked in tandem to provide participating teachers a retirement pension from the state.⁵⁸

Every public school teacher hired after March 8, 1915, was required to join the system and every public school teacher hired prior to March 8, 1915, was eligible to join

⁵⁷ Senate confirmation of TRB members is not required under 2-15-1010, MCA, somewhat of an anomaly among gubernatorial appointments to various boards. However, appointees to the Public Employees' Retirement Board were also excepted from Senate confirmation until March 27, 2007, a result of the adoption of Ch. 68, L.. 2007 (SB 72), which was requested by the 2005-06 State Administration and Veterans' Affairs Interim Committee.

⁵⁸ As used in the Act, "teacher" included, "[E]very public, state or county school teacher who shall have served as a legally qualified teacher in public, state or county, day or evening schools or partly as such teacher and partly as state or county or city superintendent or supervising executive or educational administrator...". (Sec. 13, Ch. 95, L. 1915.)

the system.⁵⁹ Once fixed as a member of the system, the teacher:

- contributed \$1 of salary per month to the system;
- became eligible for a retirement benefit after serving as a teacher for 25 years:
 - ▶ 15 of which must have been in the schools of Montana; and
 - ▶ the last 10 of which must have been in actual service unless the teacher had been granted a leave of absence;
- upon retirement under the above-stated service thresholds became "...entitled to receive during life an annual retirement salary of ... \$600..." to be paid in quarterly installments;⁶⁰ or
- upon voluntary or involuntary retirement by reason of physical or mental incapacity after having been employed as a teacher in the state for at least 15 years became "...entitled to receive, during the period of such disability, an annual salary, which shall bear the same proportion to ... \$600 as is borne by the number of years of said teacher's time of service to twenty-five years".⁶¹

1937 -- Teachers' Retirement System (TRS)

Although post-dating the Public School Teachers' Retirement Salary Fund by more than 20 years, the Teachers' Retirement System (TRS) we know today was originally enacted by the adoption of Chapter 87, Laws of Montana, 1937. The system was statutorily designated "The Teachers' Retirement System of the State of Montana"⁶² and

⁵⁹ A teacher hired prior to March 8, 1915, had a window within which to elect to participate in the retirement system--or not participate. A teacher who wished to participate was required to file appropriate papers prior to January 1, 1916, positively stating the desire to participate. A teacher who did not wish to participate was not required to file anything, the default for then-current teachers being nonparticipation.

⁶⁰ According to the *Fourteenth Biennial Report of the Superintendent of Public Instruction*, the average monthly salary of teachers in 1915 was about \$90 for male teachers and about \$75 for female teachers. However, it is unclear from the *Report* whether the reported average salaries were paid for 9 months or 12 months--the typical options among teachers today--or even some other number of months. The above-cited salary figures translate into 12-month annual average salaries of about \$1,080 for male teachers and about \$900 for female teachers or into 9-month annual average salaries of about \$810 for men and \$675 for women.

⁶¹ Sec. 14, Ch. 95, L. 1915. Although unclear from the statutory provision itself, it appears that this section of law is the basis of "superannuation" retirement specified in subsequent versions of the retirement system for teachers. I make the speculation because "superannuation" means: "(1) to set aside, or become, old-fashioned or obsolete; (2) to retire from service, esp. with a pension, because of old age or infirmity." (*Webster's New World College Dictionary*, 4th ed., Michael Agnes, ed., IDG Books Worldwide, Inc., 2001.)

⁶² Sec. 2, Ch. 87, L. 1937.

still goes by that name officially.⁶³

The 1937 TRS shared various characteristics with the system that had been adopted in 1915, but also had different components as well. Under TRS, an individual teacher-member of the 1937 System:⁶⁴

- beginning March 10, 1937, contributed 5% of salary per month to the system (rather than the flat, \$1 per month);⁶⁵
- became eligible for a retirement benefit after having attained the aged of 60 years and serving as a teacher for at least 15 years, the last 10 of which must have been in service in Montana;⁶⁶
- upon retirement under the above-stated age and service thresholds became entitled to receive:
 - ▶ an annuity amounting to the actuarial equivalent of the member's accumulated contributions at the time of retirement; and
 - ▶ a pension equal to:
 - ✓ 25% of the member's final average compensation if the member had accumulated at least 35 years of creditable service; or
 - ✓ if the member had less than 35 years of creditable service, 1/140 of the member's final average compensation multiplied by the total number of years of creditable service.

The member was also given four different options under which the member's retirement benefits would be paid out.

- became entitled to a disability retirement (if disabled) consisting of:
 - ▶ an annuity amounting to the actuarial equivalent of the member's accumulated contributions at the time of retirement; and
 - ▶ a pension that:
 - ✓ when added to the annuity, equaled 90% of 1/70 of the member's final

⁶³ See 19-20-102, MCA.

⁶⁴ As with the 1915 system, membership in the system was optional for a teacher employed as a Montana public school teacher as of March 10, 1937.

⁶⁵ A teacher 60 years of age or more and who had rendered 35 years of creditable service in the system was not required to contribute, but could continue contributions at the teacher's option.

⁶⁶ The 1937 System also had a mandatory retirement age of 70 years.

- average compensation multiplied by the total number of years of creditable service, provided the total annuity plus pension exceeded 25% of the member's final average compensation; or
- ✓ if the total did not exceed 25% of the member's final average compensation, an amount that would provide the member a total benefit--the annuity amount plus the pension amount--of 25% of the member's final average compensation.

Notably, the TRS Pension Accumulation Fund was also earmarked to receive 5% of the net receipts from the sale of liquor⁶⁷ and an amount (from the state general fund) equal to 4% of the total annual compensation paid to TRS members as a "deficiency contribution".⁶⁸ The deficiency payment was established to cover the future costs of previously unfunded benefits payable to teachers employed prior to March 10, 1937, who opted to become members of the 1937 TRS, i.e., those who chose to transfer membership into TRS or who chose to become members of TRS even though they may not have been a member of the 1915 pension system.⁶⁹

Teachers who had been members of the 1915 system prior to the 1936-37 school year but who were transferred to TRS were accorded the same benefits to which they were entitled under the 1915 system, i.e., an annual combined annuity and pension of \$600. The other teachers, new to the TRS after the 1935-36 school year, became entitled to the formula-driven amount provided for under the system.

While the TRS seemed to contemplate that teachers would retire at age 60, it also established a mandatory retirement age of 70 years, but grandfathering pre-TRS teachers, who were allowed to work to age 75 before mandatory retirement was imposed.⁷⁰

Since enactment in 1937, the TRS has undergone numerous changes. Nearly every legislative session legislators revise teachers' retirement in one way or another. Some

⁶⁷ Section 11(1), Ch. 87, L. 1937.

⁶⁸ Section 8(3)(c) through (3)(e), Ch. 87, L. 1937.

⁶⁹ The "deficiency contribution" associated with the 1937 TRS is analogous to the "plan choice rate" payable currently under either the PERS Defined Contribution plan or the TRS Optional Retirement System.

⁷⁰ Section 6(1)(b), Ch. 87, L. 1937.

of the more substantive changes in recent years, listed in chronological order but not necessarily in any particular order of import, are listed below.

Year Change or Provision

1945 Chapter 137, L. 1945. The legislature ceased to pay the employer contribution to the pension accumulation fund for elementary schools. Additionally, unless the total amount levied in the district for operating elementary schools exceeded the value of 10 mills levied on property within the school district, the district was to pay employer contributions from the general elementary school levy. In a case where the revenue from a 10-mill levy on district property was not sufficient to pay the operating costs of the district, including the employer contribution to TRS, the elementary district was required to specially levy for the amount in excess of the revenue accruing from a 10-mill levy in the district. High school districts, however, were required to levy for the total amount of employer contributions as the state absolved itself of employer contributions for high school districts as well. The levy for retirement contributions due from high school districts was distinct from and supplemental to the general levy for operating the high school.

Year Change or Provision

1971 Chapter 5, L. 1971. This Act was a general recodification of laws relating to K-12 public schools. Although the title of the bill, SB 1 (1971), began with, "An Act for the Codification and General Revision of Laws Relating to Public Schools...", Sen. David James, primary sponsor, declared that the bill was simply a bill to clarify and recodify existing provisions related to public schools; "...It was the unanimous decision of the subcommittee that the recodification contain no substantial changes in the law as it appears today and Senate Bill 1 merely presents the law now in effect in considerably better shape."⁷¹

The enactment of Ch. 5, L. 1971, makes tracing legislative changes to the TRS between 1937 and 1971 a very time-consuming and tedious task. That said, however, there are some notable differences between the TRS enacted in

⁷¹ *Minutes*, Special Joint Meeting of the Senate and House Committees on Education, January 5, 1971; from Montana Historical Society archives.

1937 and the TRS provisions as they appear in Ch. 5, L. 1971, including:⁷²

- the definition of "Average final compensation". The term was defined in 1937 as "the average annual compensation, pay or salary earnable by a member during his last ten years of service as a teacher". By 1971, the definition had at some time (but not by Ch. 5, L. 1971) been revised to "the average of the earnable compensation of any three (3) consecutive years on which the five per cent (5%) contribution has been made by the member".⁷³
- the composition of the Retirement Board. In 1937 the Board was made up of the superintendent of public instruction, the state treasurer, the attorney general, and two members "known as teachers" appointed by the state board of education. The AG was also designated the "legal advisor" to the Board. By 1971, the Retirement Board was composed of the superintendent of public instruction, two persons from the teaching profession who are members of the retirement system, and two persons representing the public. The appointee members were appointed by the governor and the role of the attorney general was recast to be the legal counsel only to the Board.
- retirement eligibility and the retirement benefit. Under the 1937 TRS, a teacher became eligible for a "superannuation retirement benefit" at the minimum age of 60 and with a minimum of 15 years creditable service. The full superannuated retirement benefit (retiree has at least 35 years of service and is 60 years old) was composed of: (1) an annuity equal to the actuarial equivalent of the teacher's accumulated contributions at the time of retirement; and (2) a pension equal to 1/4 of the teacher's final average compensation. By 1971, eligibility for full retirement remained 35 years of service but no longer included the minimum 60 years of age. There were also provisions added for a prorated retirement benefit provided the TRS member was at least 60 years old and had at least 5 years of creditable service of which the last 5 years must have been in Montana. The 1971 law also: (3)

⁷² The provisions of Ch. 5, L. 1971, that address the Teachers' Retirement System generally are contained within Section 96 through Section 113 of the bill, enacting Sections 75-6201 through 75-6218, RCM. (See pp. 101 through 123, Vol. 1, Laws of Montana 1971.)

⁷³ The definition of "earnable compensation" had also morphed during the same time period, generally to the effect of increasing the retirement benefit.

allowed an additional benefit to a teacher with more than 35 years of creditable service (prorated); (4) established a minimum benefit for full retirement (35 years) at \$1,500 annually; and (5) provided for a benefit adjustment for teachers who retired between July 1, 1937, and June 30, 1967, of 2% for each year accruing after the teacher's retirement date.

A teacher who retired prior to March 10, 1937, with at least 25 years of creditable service (but less than 35 years) of which 15 years was earned in Montana was entitled to a minimum annual benefit of \$900, prorated against 25 years of service.

- member contributions to the annuity savings fund. The 1937 base employee contribution of 5% of compensation remained intact, but the 1971 law also allowed but did not require members to make additional contributions. The ultimate effect of additional employee contributions was a higher annuity benefit upon retirement.
- employer contributions to the pension accumulation fund. The 1937 TRS set the "normal rate" of contribution at 4% of compensation and required the Retirement Board to set a "deficiency rate" which was intended to make the pension fund actuarially sound. In 1937, the statute specified the state, not the school district, as the entity responsible for contributions to the pension accumulation fund.⁷⁴ To foster actuarial soundness of the TRS, the 1937 TRS also required that 5% of the net proceeds from liquor sales be deposited to the pension accumulation fund in TRS.

The 1971 law states that the employer, defined as the state, the school district, or any other political subdivision that employs the teacher must contribute 4.5% of earnable compensation through June 30, 1978, then dropping to 4% beginning July 1, 1979. There is no mention in the 1971 law of a deficiency contribution, which leads one to believe that by 1971 the TRS was thought to be actuarially sound and not in need of a "deficiency contribution".

⁷⁴ It is believed that the school districts were required to levy for teacher retirement and transmit collections to the state for deposit into the pension accumulation fund, but the statute as written doesn't say that and it is unknown from data at hand what duty, if any, school districts had to contribute to the pension fund in 1937 and subsequent years..

- post-retirement employment. The 1937 TRS did not specifically contemplate post-retirement employment--that is, the law was silent on the matter. By 1971, the statute allowed a retired member to earn, as a public school teacher, 1/4 of the member's final average compensation without loss of TRS retirement benefits.

Year Change or Provision

1977 Ch. 127, L. 1977. This law, introduced as House Bill No. 34, was intended to "...generally revise and clarify the laws relating to teachers' retirement and death and disability benefits". Some of the more significant provisions visible in Ch. 127, L. 1977, included:⁷⁵

- employee contribution. By the time Ch. 127 was enacted, the employee contribution to the annuity fund had increased to 6 1/8% of the employee's earnable compensation. It had been 4.5% of earnable compensation under the 1971 law.
- employer contribution. Similarly to the employee contribution rate, the contribution rate for employers of TRS members had risen to 6 1/4% by 1977.
- eligibility for retirement. Eligibility for retirement from the TRS without penalty had become age 60 with 5 years of creditable service or 30 years of creditable service regardless of age.
- retirement benefit. The full retirement benefit--which required 30 years of creditable service--had become "one-half of final average compensation", and was composed of a pension and an annuity. A TRS member could also take a less-than-full retirement benefit if the member was at least 60 years of age and had at least 5 years but less than 30 years of creditable service. Under this provision, the retirement benefit was a pension plus an annuity, the total of which was equal to 1/60 of the member's final average compensation multiplied by the member's years of creditable service.

⁷⁵ Montana was still operating with the Revised Codes of Montana or RCM in 1977, the immediate predecessor to the current Montana Code Annotated. Additionally, bills considered by legislatures prior to 1979 did not list in the title the code sections revised or repealed in the bill. These two factors add difficulty to tracing historical changes in the TRS--or any code provision. Therefore, Ch. 127, L. 1977, was not necessarily the legislative vehicle that enacted some of the statutory changes cited herein; rather, the changes can be noted from the statutory language that appears in Ch. 127.

- minimum retirement benefit. The minimum benefit for TRS members with 30 years or more of creditable service had been increased to \$2,400 annually. If service was less than 30 years, the minimum benefit was prorated based on the 30-year threshold.
- early retirement. A TRS member at least 55 years old who had accrued at least 5 years of creditable service, but less than 30 years, was eligible for an early retirement benefit. The early retirement benefit was to be calculated in the same way as the benefit for a full retirement, i.e, 30 years of service or age 60 and at least 5 years of service, but the benefit would be reduced by 1/2% for each month that the member's retirement date preceded the earlier of the member's 60 birthday or the end of the member's 30th year of service.

Year Change or Provision

1977 Ch. 333, L. 1977. Ch. 333 enabled legislators to continue to participate in the TRS during absences for participating in a legislative session. The TRS member-legislator was required to continue making the employee contribution to the system and the state, through legislative appropriation, was required to make the employer contribution.

Year Change or Provision

1981 Ch. 549, L. 1981. This law provided an *ad hoc* cost-of-living increase law for TRS retirees, including disability retirees, and their beneficiaries. Disability retirees were granted a monthly benefit increase of 50 cents for each year the member had been retired by reason of disability prior to July 1, 1979. Superannuated retirees and beneficiaries received a monthly benefit increase of 50 cents for each year of service multiplied by the number of months the member had been retired after July 1, 1979 but before June 30, 1981, divided by 24 months (a maximum benefit increase of 50 cents per month for each year retired prior to July 1, 1979). The benefit increases also applied to TRS retirees who had opted for early retirement.

Ch. 551, L. 1981. The provisions of this law allow a TRS member with a minimum of 5 years of creditable TRS service to purchase a maximum of 5 years

of creditable service for having taught in a private school. To purchase the service credit, the TRS member was obliged to pay both the employee and employer contributions, plus the rate of interest specified in statute when the member becomes eligible to purchase the service.⁷⁶

Year Change or Provision

1987 Ch. 38, L. 1987. The provisions of this law, introduced as House Bill No. 244, allow a TRS member who is absent from employment due to an employment-related accident to purchase a maximum of 2 years of creditable service for the time missed. To purchase the service credit, the TRS member was required to pay both the employee contributions, plus interest, and employer contributions, plus interest that would have accrued.

Ch. 79, L. 1987. Introduced as House Bill No. 427, this law allowed a TRS member with a minimum of 5 years of creditable TRS service to purchase a maximum of 5 years of creditable service for having taught in a private school. To purchase the service credit, the TRS member was obliged to pay both the employee and employer contributions, plus the rate of interest specified in statute when the member becomes eligible to purchase the service.

Ch. 494, L. 1987. House Bill No. 300 authorized the Board of Regents to establish an optional retirement program for "the administrative officers and members of the instructional and scientific staff of the Montana university system. The Regents exercised the authority and created the Optional Retirement Program (ORP). Significant elements of the ORP included:

- the eligibility criteria. Any active TRS member was eligible to transfer membership from the TRS to the ORP. Transfer was accomplished by the TRS member submitting a signed election to transfer to ORP. An active TRS member who elected, in writing, to stay in the TRS was allowed to do so and an active TRS member who did not file an election was required to remain in

⁷⁶ With the enactment of Ch. 551, L. 1981, a TRS member could potentially purchase TRS service credit for certain service in out-of-state, federal, or private schools or for certain military service, red cross service, or service in the merchant marines.

- the TRS. An eligible persons who was newly employed by the university system was required to make an irrevocable election to participate in either the TRS or ORP.
- employee and employer contributions. Employee contributions to the ORP were to be at the same rate (6 1/8%) as employee contributions to the TRS. Employer contributions to the ORP for each ORP member that were split between the employee's private account and the TRS (to pay off the unfunded actuarial liability to the TRS resulting from the member's transfer to the ORP).
 - the retirement benefits. The benefits for TRS members who remained with TRS and for new employees who chose to become TRS members remained the same as they were prior to adoption of HB 300. However, for eligible employees who chose the ORP, the benefits of the TRS disappeared. Section 7 of the bill stated, "No retirement, death, or other benefit may be paid by the state or the board of regents under the optional retirement program. Benefits are payable to a participant and his beneficiaries by the designated company or companies in accordance with the terms of the contracts."
 - the tax status of retirement benefits. As initially adopted, Ch. 494, L. 1987, exempted from state and local taxation all ORP "contracts, benefits, and contributions".⁷⁷ Essentially, ORP retirement benefits were exempt from Montana state individual income taxes.

Year Change or Provision

1993 Ch. 178, L. 1993. Senate Bill No. 386 changed the eligibility provisions for ORP membership. Prior to July 1, 1993, academic and professional administrative personnel contracting individually with the Board of Regents could opt into either the TRS or ORP. After July 1, 1993, membership in the ORP became mandatory for academic and professional administrative personnel initially contracting individually with the Board of Regents and the option to participate in the TRS

⁷⁷ The nontaxable status of ORP retirement benefits and earnings were virtually the same for benefits paid out to retirees and beneficiaries of all of the state's retirement system. The tax status changed, however, when the courts determined that state and local public retirement systems' benefit payments were subject to the same tax status as the retirement benefit payments received by federal employees. See *Davis v. Mich. Dept. of Treasury*, 489 US 803 (1989).

was foreclosed.

Year Change or Provision

1999 Ch. 111, L. 1999. Section 9 of the bill (HB 118) allowed a member, after a series of elections, to redeposit in the annuity savings fund an amount equal to accumulated contributions that the member had previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

Section 10 of the bill provided a limited "window" through which a legislator who did not elect to continue to participate in the system and who subsequently decides to participate as a member must be awarded creditable service for legislative service. To earn the service credit, if the legislator has to contribute an amount equal to the member contributions that would have been made if the legislator had elected membership and interest at the rate that the contributions would have earned if they had been on deposit with the retirement system. Employer contributions are to be made by the legislative branch and must include interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

Section 11 of the bill requires that a substitute teacher who did not elect membership in TRS and who subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes an amount equal to the combined member and employer contributions that would have been made if the substitute teacher had elected membership and interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

Ch. 360, L. 1999. Introduced as House Bill No. 72, this law established a guaranteed annual benefit adjustment (GABA) for TRS retirees and beneficiaries. The GABA was set at 1.5% annually and was to be factored in to the retirement benefit on January 1 following the 36th month after the member's retirement date.

Year Change or Provision

2001 Ch. 149, L. 2001. The statutory provisions for the GABA adjustment for eligible TRS retirees was revised to allow the Teachers' Retirement Board to increase the GABA to a maximum of 3%, provided certain conditions were met. (The conditions were not met between 2001 and 2007 and the GABA remained at 1.5% as originally established.)

Year Change or Provision

2007 Ch. 305, L. 2007. Introduced as House Bill No. 63, this law accomplished a variety of objectives to address the unfunded actuarial accrued liability (UAL) in the TRS. Among other things, HB 63:

- imposes a supplemental state contribution to TRS. Additional contributions to the TRS of 2% for FYs 2008 and 2009 and 2.38% thereafter are payable by the state, not school districts. The supplemental contribution increases the total contributions to TRS from 14.73% of compensation to 16.73% for FYs 2008 and 2009, and to 17.11% thereafter.
- limits the effect on the retirement system of isolated salary increases received by a member. The limitation applied to end-of-career promotions or one-time salary enhancements during the member's last years of employment.
- limits the compensation that a retired member may earn after retirement. The law continues to allow a TRS retiree to return to work in a TRS-covered position without being subjected to a reduction in retirement benefits, provided the retiree does not earn compensation above a certain threshold, but it establishes clearer and perhaps stricter limits on the meaning of "compensation" in this context.
- limits future adjustments to the GABA. The GABA for the TRS is maintained at the existing 1.5% but removes the authority of the Teachers' Retirement Board to increase, under certain conditions, the GABA to a maximum of 3%.

The statutory enactments and changes relating to the Teachers' Retirement System listed above that have been made over the years are but a few of the total number and types of changes made since 1915. As might be expected, the TRS has undergone numerous and varied adjustments over the past century or so. It is highly likely that additional changes will also be made over the next 100 years.

**University System
Title 19, chapter 21, MCA ⁷⁸**

Introduction

The University System Optional Retirement Program (ORP) was enacted in 1987 by Ch. 494, L. 1987. The legislation was introduced at the behest of the university system on behalf of, particularly, the University of Montana and Eastern Montana College, but also for others. The law allowed but did not require the Board of Regents to establish a retirement system for various university professionals that were, prior to adoption of the ORP, required to participate in the Teachers' Retirement System (TRS). Although the statute does not specify or label the ORP as a defined contribution (DC) retirement plan, it does require that the benefits of the program "...must be provided through individual annuity contracts, either fixed or variable, or a combination of contracts, issued to and owned by the participants in the program."^{79 80}

Under the ORP, membership in the system was voluntary and open only to university system employees who were under contract in an instructional, research, or administrative officer position--basically professors, scientific researchers, and administrative officers. Employee contributions to the ORP were to be at the same rate (7.044%) as employee contributions to the TRS. Employer contributions (7.428%) to the ORP for each ORP member were divided (unequally) between the employee's private account and the TRS to pay off the unfunded actuarial liability to the TRS resulting from the member's transfer to the ORP. The amount to be deposited to the employee's account had to total at least 10%, but could eventually be as much as 14.472% depending on the amount necessary to amortize the unfunded liability in the

⁷⁸ This section of report focuses on the ORS plan and, unless noted otherwise, the narrative does not address the substance of other plans or the membership of any employees who are not ORS-eligible, but who instead may participate in another of the public employee retirement systems.

⁷⁹ Sec. 1, Ch. 494, L. 1987. The quoted material is from the original legislation and remains unchanged in the current MCA. See 19-21-101, MCA.

⁸⁰ Testimony submitted by Les Loble, representing TIAA-CREF, clearly states that the ORP as proposed is a "defined contribution" plan. See *Minutes*, House State Administration Committee, Feb. 13, 1987, testimony of Les Loble, p. 2 and Exhibit #2.

TRS resulting from the transfers of TRS members to the ORP.⁸¹

The minutes of the standing committees hearing and acting on the legislation indicate that the bill's proponents and opponents disagreed on the amount (contribution rate) needed to amortize the unfunded liability in the TRS associated with then-members of TRS who were assumed likely to transfer into the ORP. The proponents believed that 4.472% of employee compensation was adequate while the proponents believed that 5.4% of compensation was a more appropriate rate. In the end, amendments to the bill were adopted that required the appropriate amortization rate to be determined by actuarial analysis and that the appropriate rate so determined be paid by the Board of Regents.⁸²

Because the ORP was (and is) a defined contribution plan, retirement benefits payable under the plan were not specified in statute. Rather, the statute stated specifically that the benefits payable to participants were to be as expressed in the contract between the ORP member and the company that was party to the contract. The statute also exempted ORP benefit payments from state and local income taxes.

Somewhat different from all of the other public employee retirement systems and plans, the ORP was to be administered by the Board of Regents rather than by one of the retirement boards, i.e., the PERB or the TRB.

The ORP membership started out fairly small by number, but has grown considerably over the past 20 years. As of June 30, 2005, the ORP had 3,915 participants.⁸³ By 2005, however, the membership of ORP had expanded to include all instructors, researchers, and administrative officers initially hired after June 30, 1993, of the same eligibles participating in the ORP prior to July 1, 1993, (but whose accounts were not terminated, e.g., on account of death), and all other eligible public employees (typically eligible for PERS membership) electing participation in the ORP after June 30, 2002.

The ORP is still governed by the 7-member Board of Regents. Statutory provisions governing the ORP are codified primarily in Title 19, chapter 21, MCA.

⁸¹ Sec. 6, Ch. 494, L. 1987. See also section 19-21-203, MCA.

⁸² Sec. 9, Ch. 494, L. 1987. See also *Minutes*, Senate State Administration Committee, March 18 and 20, 1987.

⁸³ *Montana University System Optional Retirement Plan: Report on the History and Operation*, Laurie Ekanger, Office of Commissioner of Higher Education, May 2005, Table 2, p. 25.

The original provisions of ORP have been amended many times in the past 20 years. It is more likely than not that legislators will in any regular legislative session revise the ORP in one way or another. Some of the more substantive changes in recent years are listed below in chronological order, but not necessarily in any particular order of import.

Year Provision or Change

1991 Ch. 823, L. 1991, capped the amount of retirement benefit exempt from state and local taxation at \$3,600 annually.

Year Provision or Change

1993 Ch. 178, L. 1993:

- required all MUS instructors, researchers, and administrators to participate in ORP;
- provided that the minimum amount to be contributed to each ORP member's account equal 12% of compensation. (The 12% was composed of the employee's contribution rate (then 7.044%) plus the difference between 12% and the employee's contribution rate (7.044%) or 4.956%. The remaining 2.088% was directed to pay the unfunded liability in the TRS.)

Year Provision or Change

1997 Ch. 419, L. 1997, established a supplemental contribution rate for the ORP at: 2.81% beginning July 1, 1997, then increasing as follows: 3.12% on July 1, 1998; 3.42% on July 1, 1999; 3.73% on July 1, 2000.

Year Provision or Change

1999 Ch. 471, L. 1999, allowed only certain PERS- and TRS-eligible employees the option of participating in the ORP as of July 1, 2002.

Year Provision or Change

2001 Ch. 490, L. 2001:

- allowed all PERS-eligible employees of the Montana university system (MUS)

- to instead participate in the ORP;
- established a distribution schedule for the employer's contribution to the ORP for a PERS-covered employee transferring to the ORP.

**Public Employees' Retirement: Defined Contribution Plan
Title 19, chapter 3, part 21, MCA.**

Introduction

The Defined Contribution Plan within the Public Employees' Retirement System, frequently referred to as the PERS-DC plan or simply the "DC" plan, was enacted in 1999 by Ch. 471, L. 1999. The legislation was introduced at the request of the Committee on Public Employee Retirement Systems (CPERS)⁸⁴ as HB 79 and was the result of an interim study that directed the CPERS to design a new or modified retirement plan.⁸⁵ The preamble to the bill attempted to provide the rationale for the legislation and the establishment of a DC plan for public employees.⁸⁶

WHEREAS, House Bill No. 90 of the 55th Legislature required the Committee on Public Employee Retirement Systems (CPERS) to design a new or modified public employees' retirement plan containing certain specified features; and

⁸⁴ The CPERS was a joint, bipartisan committee composed of 8 members, evenly divided by house and political party. Its function was to review, analyze, and make recommendations regarding Montana's public employee retirement systems, including the TRS and ORS. Established in 1993 under Ch. 549, L. 1993, it operated for three interims before the enabling statutes were repealed in 1999 by Ch. 19, L. 1999.

⁸⁵ House Bill No. 90 (1997) had directed the CPERS to conduct the study and to develop legislation that would: increase portability of member contributions; allow members alternate investment choices; offer as an option a defined benefit for retirees; establish an implementation schedule; provide for member education.

⁸⁶ Although Ch. 471, L. 1999, included Section 44 that stated the legislature's intent for the DC Plan, the language in Section 44 doesn't shed much light on the legislature's or even the CPERS' rationale for enacting the DC Plan. Section 44 read: "It is the intent of the legislature that, in implementing and administering the defined contribution plan: (1) changes to current administrative processes and the impact of those changes on employers be minimized to the extent possible; (2) the administrative structure for the plan be configured in an economical and efficient manner; (3) administration and services for the plan be contracted out to the extent possible, but that the board provide for the diligent oversight of the contracts; (4) reasonable participant services be provided for and that fees be commensurate with the services; (5) lines of communication and responsibilities be clearly established so that employers or their personnel and payroll officers do not advise members about plan choices or investment alternatives; and (6) employers be encouraged to provide paid time for employees to attend educational programs sponsored by the board...."

WHEREAS, House Bill No. 90 required that the new or modified plan increase portability of member contributions, increase flexibility to allow members to choose among investment options, and retain a plan component that offers a specified benefit in retirement; and

WHEREAS, House Bill No. 90 required that the CPERS establish an implementation schedule for the new or modified plan, provide for an educational program, and present any implementing legislation; and

WHEREAS, the CPERS contracted with a benefits consulting firm and conducted a thorough and broad-based study during the 1997-98 interim to determine the design of the new or modified retirement plan; and

WHEREAS, the study involved numerous focus groups from across Montana, including members of retirement systems, employers, plan administrators, and public officials; and

WHEREAS, the CPERS commissioned and considered reports and analyses by the contracted consulting firm; and

WHEREAS, the CPERS has concluded the study required by House Bill No. 90 and recommends that the current public employees' retirement system (PERS) consist of two retirement plans, the current defined retirement benefit plan and a new defined contribution retirement plan; and

WHEREAS, current and new members of the PERS may choose between either the defined benefit plan or the defined contribution plan.

The late 1990s were heady times for stock pickers and venture capitalists and even very good times for more conservative investors in the broader equity markets, including mutual funds. News watchers had seen the DOW industrial index climb to the 10,000 level on March 29, 1999, from the 5,000 level on November 20, 1995, a mere 3 1/2 years earlier. Given that 45% of Americans were invested in some way in equities by the late 1990s,⁸⁷ the health and vitality of the U.S. financial markets were increasingly important to a steadily increasing share of the population. Portfolio performance was becoming a regular topic of discussion, not only over martinis at the country club, but around water coolers and on shop floors throughout the county.

Legislators too were aware of the stock market's performance, if not as individual investors then as policy makers considering legislation to (typically) increase public employee retirement benefits. That exposure for some legislators combined with appeals from some constituents and interest groups to allow individual employees to

⁸⁷ Gretchen Mortinson, quoted online in the *Online News Hour*, March 30, 1999, at http://www.pbs.org/newshour/bb/economy/jan-june99/dow_3-30.html.

manage their own retirement funds produced the environment in which was born both the study of alternative retirement plans and the enactment of them.

As enacted in 1999, Ch. 494, L. 1999, among other things:

- expanded the membership of the PERB from 6 members to 7, requiring that at least one of the Board members be a member of the PERS-DC Plan;
- transferred custodianship of DC plan assets from the state treasurer to PERB;
- transferred responsibility for investing the funds in DC Plan member's accounts from the Board of Investments to the individual DC Plan account holders;
- allowed members of the PERS defined benefit plan (often referred to as the PERS-DB Plan, the DB Plan, or simply "DB") to transfer membership into the DC Plan;
- retained for the DC Plan members' accounts the same contribution rates (6.9% of compensation established for DB Plan members) for both employees and employers;
- allocated all of a DC Plan member's employee contributions to the member's account and allocated the employer's contribution to the member's account (4.49% of compensation), to pay off the unfunded liability in the DB Plan (2.37%), and to provide for employee education regarding retirement options (0.04%).

The Board was (and is) required to adjust the allocation of the employer's contributions as determined by actuarial necessity in anticipation or evidence of the relative adequacy or inadequacy of the "plan choice rate", which the amount of employer contributions allocated for the amortization of unfunded liabilities in the DB Plan.⁸⁸

- required the PERB to establish an employee investment advisory council;
- established a number of statutory guidelines for DC Plan implementation and administration.

⁸⁸ Secs. 53 and 54, Ch. 471, L. 1999, codified respectively at 19-3-2117 and 19-3-2121, MCA. Basically, the unfunded liability in the DB Plan was to be determined and allocated across the DB Plan membership pursuant to actuarial assumptions set by the Board. Subsequently, the Board was required to periodically review the "plan choice rate", i.e., the percentage of employer contributions for DC Plan members' allocated to amortize the unfunded liability in the DB Plan due to the members' participation in the DC Plan rather than the DB Plan, and adjust the plan choice rate to reflect true actuarial experience to the end that the unfunded liability in the DB Plan due to the members' participation in the DC Plan rather than the DB Plan would be fully paid off within 30 years (or less) of implementation at no additional cost to the DB Plan.

Under the DC Plan, membership in the system was and is voluntary to public employees for whom the DB Plan is the default.

Because the DC Plan was and remains a defined contribution plan, retirement benefits payable under the plan are not specified in statute. Rather, the statute states specifically that the benefit payable to a participant in the DC Plan is "... payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124".⁸⁹ In short, the benefit for a DC Plan member is the benefit expressed in the contract between the DC Plan member and the company that is party to the contract.

The DC Plan membership started out small by number and has remained relatively small (compared to the number of potential members). As of June 30, 2006, the DC Plan had 1,362 active members, 277 inactive members, and only 2 retiree beneficiaries.⁹⁰

The DC Plan, as part of the PERS, is governed by the 7-member PERB. Statutory provisions governing the DC Plan are codified primarily in Title 19, chapter 3, part 21, MCA.

The original provisions of DC Plan have been amended in each of the four regular legislative sessions occurring since enactment in 1999. It is more likely than not that legislators will in any regular legislative session revise the DC Plan in one way or another. Some of the more substantive changes are listed below in chronological order, but not necessarily in any particular order of import.

Year Provision or Change

2001 Ch. 490, L. 2001:

- changed from mandatory to permissive the PERB's contracting for plan administration and using a competitive bidding process when contracting for consulting, educational, investment, record keeping, or other services for the

⁸⁹ Section 19-2-303(10)(b), MCA.

⁹⁰ *Comprehensive Annual Financial Report* (for FY ending June 30, 2006); pub. by Public Employees' Retirement Board, prepared by Fiscal Services Bureau, Public Employee Retirement Administration, 2006, p. 54.

DC Plan;

- established that statutory provisions governing the defined contribution plan and the optional retirement program are subject to amendment by the legislature. Employees choosing the defined contribution plan or the optional retirement program do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice becomes effective.

Ch. 423, L. 2001:

- provided for a long-term disability insurance plan for members of the DC Plan. (Insurance for employee disability was (and is) part of the DB Plan but absent in the original DC Plan.)
- reduced the portion of the employer's contribution deposited to the member's account from 4.49% to 4.19%
- allocated 0.3% of compensation from employer's contribution to a long-term disability plan trust fund.

Year Provision or Change

2003 Ch. 429, L. 2003, extended the duration of disability benefits from age 60 to 65.

Year Provision or Change

2007 Ch. 371, L. 2007, through a supplemental contribution to be paid by the state, regardless of who the actual employer is:

- increased employer contribution rate by 0.135% (to 7.035%) of compensation beginning July 1, 2007; and
- increased employer contribution rate by 0.135% (to 7.17%) of compensation beginning July 1, 2009. The additional, supplemental contributions are to be allocated in the following order: to the administrative account used by the board to meet the expenses of the plan's startup loan, until paid in full; then to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and finally, to the long-term disability plan trust fund to provide disability benefits to eligible members.

**Deferred Compensation
Title 19, chapter 50, MCA.**

Introduction

In 1974, the 43rd Montana Legislature enacted Ch. 264, L. 1974, which allowed the state or any political subdivision of the state to establish deferred compensation programs. In general and simple terms, a deferred compensation program is a program under which an employee may defer recognizing a portion of the employee's compensation under requirements established under Section 457 of the Internal Revenue Code.

By "deferring" the recognition of compensation, the employer holds in trust for the exclusive benefit of the employee all of the deferred compensation and all income earned on the deferred compensation and the employee is allowed to direct, with some limitations, the investment of the deferred income. There are two primary advantage to deferring compensation:

(1) by deferring recognition of the compensation and income, neither the compensation or the income from investing the deferred compensation is subject to income taxation until withdrawn, typically at a later date and under circumstances where the rate of tax to which the employee is subject will be lower than at the time of the deferral; and

(2) to the extent that taxation of the deferred compensation and the investment income earned on the deferred compensation is delayed, the power of long term investing, i.e., compounding of returns, is substantially enhanced.

Under Montana law,⁹¹ an "employee" eligible to participate in a deferred compensation program is "...any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services."

As of June 30, 2006, there were 7,935 participating members, and 5,357 of those members were actively contributing to their respective deferred compensation accounts.

⁹¹ Section 19-50-101(4), MCA.

The deferred compensation program is governed by the 7-member PERB or, for political subdivisions, the appropriate officer designated by the political subdivision. Statutory provisions governing deferred compensation programs are codified primarily in Title 19, chapter 50, MCA.

Unlike any of the other retirement systems or plans, statutes governing the deferred compensation program have rarely been amended since enactment in 1974.

Legal Issues Surrounding Changes from a Defined Benefit Plan to a Modified Defined Benefit Plan with a Defined Contribution Component

Background

The following narrative is a legal memorandum written by David Niss in February 1998 for an interim study undertaken during the 1997-1998 interim by the Committee on Public Employee Retirement Systems (CPERS). The CPERS had asked for an analysis of legal issues that might arise if the legislature should consider revising the then-existing defined benefit plans to be composed instead of a defined benefit component and a defined contribution component.

The legal issues identified in that memorandum are not only still applicable, but they also have implications for other considerations that future legislatures may undertake. With a few edits and formatting changes, the legal memorandum follows essentially as written in February 1998.

Introduction

In connection with the Committee on Public Employees Retirement Systems (CPERS) study of possible changes in the Public Employees Retirement System (PERS) from a defined benefit (DB) system to a modified DB system with a defined contribution (DC) component, you have asked three related questions regarding the character or status of retirement benefits offered by the PERS and the creation of the modified DB system. Your questions are as follows:

- A. To what extent are PERS retirement benefits protected from change by Art. II, sec. 31, of the Montana Constitution?
- B. May PERS retirement benefits of current PERS members be transferred to a modified DB system with a DC component?
- C. May future PERS members be required to join a retirement system consisting of a modified DB system with a DC component?

Discussion

- A. *To what extent are PERS retirement benefits protected from change by Art. II, sec. 31, of the Montana Constitution?*

Article II, sec. 31, Mont. Const. provides:

No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Courts and legislatures in the United States have generally taken one of several approaches in defining the legal status of retirement benefits offered by state employee retirement systems. Some states treat those benefits as "property" that is protected by those state and federal constitutional provisions prohibiting the taking of property without due process of law. Other states treat those retirement benefits as gratuities that may be changed at the will of the state legislature. Other states treat those benefits as a right that is subject to promissory estoppel (an equitable remedy, not important to this discussion, that courts use to enforce promises by a person even though no actual contract exists). Still other states treat public retirement benefits as a matter of contract governed by the state law is of contracts.⁹²

⁹² 60A Am. Jur. 2d Pensions and Retirement Funds sec. 1620 and 1626 through 1628; *Til Death Do Us Part: Pennsylvania's "Contract" With Public Employees for Pension Benefits*, Dwyer, 59 Temple L.Q. 553, 370 (1985); *Public Employee Pensions in Times of Fiscal Distress*, 90 Harvard L. R. 992 (1977). Most states that do not subscribe

Montana is among those states that treat the right to a public pension as a contract right. The Montana Supreme Court has held in Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948), Evans v. Fire Dept. Relief Ass'n 138 M 172, 355 P2d 670 (1960), Bartles v. Miles City, 145 M 116, 399 P2d 768 (1965), and Sullivan v. State, 174 M 482, 571 P2d 793 (1977), that benefits provided by public retirement systems are governed by a contract between the public employer and the employee to provide retirement benefits and that attempts to change the benefits agreed to in the contract are generally prohibited by Art. II, sec. 31, of the Montana Constitution, prohibiting the interference with contract rights.⁹³ Public employee pensions are therefore protected by Art. II, sec. 31 of the Montana Constitution. The extent of that protection is the subject of the remainder of this memorandum.

B. May PERS retirement benefits of current PERS members be transferred to a modified DB system with a DC component?

1. Vesting and pension plan modifications -- the "California rule".

Because transfer of members and benefits from the current PERS plan to a new or modified retirement plan would necessarily involve a modification of the current contract with employee parties to the contract, your question must be analyzed in terms of the modifications to the contract that the courts may allow. With this in mind, it is important to note first that the "contract" to provide a pension of some sort is formed immediately upon employment. In Evans, the Supreme Court said that "the contract arises when the fireman pays into the fund" and in Sullivan the Supreme Court held that the "terms of

to the gratuity theory appear to treat public retirement system assets as protected by either the "property" theory or the "contract" theory. The West Virginia Supreme Court applies both theories and has held pension assets to be "contractually vested property rights". Dadisman v. Moore, 384 SE2d 816, 827 (W.VA. 1989).

⁹³ This area of Montana law is not entirely free from doubt. In the case of Casey v. Brewer, 107 M 550, 88 P2d 49 (1939), the Montana Supreme Court held that retirement benefits provided by a pension system requiring mandatory membership were a "gratuitous allowance in the continuance of which the pensioner has no vested right and that pension is accordingly terminable at the will of the sovereign." This view, as it applies to mandatory contributions to a retirement system, was repeated in Clarke v. Ireland but was not repeated in either Evans or Bartles, both of which involved mandatory contributions to a retirement system. Nor were the Court's prior opinions in Casey v. Brewer or Clarke v. Ireland even mentioned by the Court in the Evans and Bartles opinions. The opinions of the Montana Attorney General concerning retirement issues have followed Evans and Bartles and disregarded the fact that the contributions to the retirement system were required by statute. See footnotes no. 5 and 6 and accompanying text.

the teachers' retirement benefit contract in Montana are determined by the controlling provisions of the teachers' retirement system statute in effect at the time the teacher becomes a member of the Montana Teachers' Retirement System." Thus, under the rationale of Evans and Sullivan, there is no point in time when transferral of an employee's benefits may be made free from consideration of principles of contract law as applied by Montana courts to a public retirement plan.⁹⁴

However, case law from other states indicates that the prohibition against impairment of contract rights provided by Art. II, sec. 31, of the Montana Constitution and the analogous federal provision in Art. 1, sec. 10, of the U.S. Constitution should not be taken too literally. There exists in some of the judicial opinions of those states adopting the contract theory of protection an exception to the prohibition against modification of pension contracts known as the "California rule", which provides that prior to retirement, an employee is vested immediately upon employment with a "limited" contract right to a "reasonable pension", that that limited right becomes a fully "vested" right to a specific pension benefit only upon retirement of the employee, and that the initial right to a "reasonable pension" is limited because the legislature may, before the employee's retirement, make "reasonable modifications" to the retirement plan. To be a "reasonable modification", a modification must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees must be accompanied by comparable new advantages. Valdes v. Cory, 139 Cal.App.3d 773, 189 Cal.Rptr. 212 (1983).⁹⁵

The "California rule", allowing certain modifications to an employee retirement plan, has not been specifically adopted in Montana, but in the Clarke opinion, the Montana Supreme Court stated:

⁹⁴ However, in Gulbrandson v. Carey, 272 M 494, 502, 901 P2d 573 (1995), the Montana Supreme Court ruled in a case in which a retired District Court judge attempted to take advantage of a Judges' Retirement System benefit enhancement that became law two years after the judge's retirement. Without citing either the opinions in Evans or Sullivan or any other authority, the Montana Supreme Court held that "[t]he terms of Gulbrandson's retirement benefit contract are determined pursuant to the statutes in effect at the time of his retirement on August 31, 1989." In making this statement, I believe that the Supreme Court assumed, without stating so, that the statutes they referred to are those that apply in the first instance to the person in question.

⁹⁵ Modifications have also been allowed by some state courts and by the U.S. Supreme Court, pursuant to Art. 1, sec. 10, of the U.S. Constitution, even if the modification results in a change that does not advantage the employee, under the conditions that (1) the modification must serve to protect basic interests of society, (2) there is an emergency justification for the enactment, (3) the enactment is appropriate for the emergency, and (4) the enactment is designed as a temporary measure. Sonoma County Organization of Public Employees v. County of Sonoma, 23 Cal.3d 296, 152 Cal. Rptr 903, 591 P2d 1 (1979).

It is true that the public interest in retirement funds and retirement programs for employees and public officers alike demands that those in charge of the funds be constantly watchful of the integrity of the fund. Changes in interest rates, increases in the life span of the employees, experience in the operation of the retirement program, may require changes to insure that all the members of the system have the benefits which they contracted for. Great latitude should be permitted the legislature in making alterations to strengthen the system. But such changes are subject to the above constitutional limitations. If the legislature is convinced of the need to safeguard and protect the fiscal base of the retirement system and plans changes to maintain the solvency of the system it must legislate within the framework of the Constitution.

The foregoing language from Clarke sounds like the "California rule" as discussed in the Valdes case. However, the language quoted from Clarke was not central to the Court's holding and might therefore be classified as dicta. Only litigation of specific changes made to retirement statutes will tell whether the Montana Supreme Court will permit some types of changes to the pension contract of an active member, under which the right to a specific benefit payment has not yet vested, while prohibiting other types of changes.

2. Opinions of the Montana Attorney General and cases from other states

Montana has seen few cases litigating the effectiveness of changes to its public retirement systems. However, several opinions have been issued by the Montana Attorney General which shed some light on the legality of several types of changes to pension contracts. In a 1973 opinion⁹⁶, Attorney General Woodahl gave his opinion as to whether the Game Wardens' Retirement System had to maintain the level of retirement benefits for present members of the system without raising the percentage contribution by members and, if it had to maintain those benefits, the options available to the Game Wardens' Retirement System. The Attorney General began by summarizing the Clarke v. Ireland opinion, noting that the rights of the members of the system were contractual in nature, the terms of the contract being "dependant upon

⁹⁶ 35 A.G. Op. 4 (1973).

statutes in force at the time the relationship was entered into". The Attorney General then summarized the Evans decision and noted, as pointed out above, that in Evans, the Supreme Court did not make its decision concerning the contractual nature of the benefit depend upon whether contribution to and membership in the retirement system was mandatory or voluntary. The Attorney General concluded that PERS had to maintain the level of benefits for current members that was then specified in statute, that to maintain that level of benefits the System had to either increase its present contribution or make up any difference at a later time, and that the employee contribution then specified in statute could not be increased "without a corresponding increase in benefits which will accrue to members at retirement." The Attorney General also pointed out that the state could always increase its contribution to the system without increasing benefits to the members of the System.

In 1982, the Montana Attorney General gave his opinion concerning the right of members of the former firefighters' retirement system who had transferred to the new Firefighters' Unified Retirement System (FURS) their benefits accrued under the old system⁹⁷. After the opinion noted that the legislation creating FURS had failed to address whether a certain class of firefighters was entitled to a certain "adjustment allowance" (guaranteeing a certain minimum retirement payment) as they had been under the old system, the Attorney General pointed out that section 19-13-107, MCA, stated legislative intent that members of the old system transferring to FURS were to retain "all rights and benefits accrued under a prior plan" and that this section actually codified the contractual rights protected by Art. II, sec. 31, of the Montana Constitution. The Attorney General held:

A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. * * * It is clear that those firemen who have transferred to the new retirement system cannot lose any retirement benefits accrued to them under the old system.

⁹⁷ 39 A.G. Op. 51 (1982).

No reported Montana cases have litigated the right of PERS members to actuarial funding of their retirement benefits or the application of that right in the context of the creation of a new or modified retirement plan. Cases from other states may therefore help clarify the rights of PERS members who transfer to a modified DB pension plan and the rights of those members who do not.

In Board of Administration of the Public Employees' Retirement System v. Wilson, 52 Cal. App.4th 1109, 61 Cal. Rptr. 207 (1997), administrators of the California PERS brought suit to invalidate two legislative appropriation measures. In the two appropriation bills, the legislature sought to change the "level contribution" form of funding the PERS, in which employee contributions were made as liability was incurred for future pension obligations, to an "in arrears" funding method, by which the employer contributions were made in the fiscal year following that in which employee services were rendered. The Court of Appeals reviewed the history and legislative intent of previous legislative funding schemes for the California PERS and concluded that "[a]ctuarial soundness of the system is necessarily implied in the total contractual commitment, because a contrary conclusion would lead to express impairment of employees' pension rights." The Court of Appeals held the two appropriation measures as not being the kind of modifications allowed to the pension plan under the "California rule" and held that the appropriation bills were unconstitutional under the provision of the California constitution prohibiting impairment of contract rights.

In Association of State Prosecutors v. Milwaukee County, 544 NW2d 888 (Wisc. Sup. Ct, 1996), a group of county prosecutors, newly designated as state employees pursuant to a reorganization of prosecution services, brought a mandamus action to compel the transfer of their contributions from a county administered retirement system to a separate state-administered retirement system. Milwaukee County refused to transfer money to the state system, contending that the transfer would be a misappropriation of money held in trust for the benefit of vested employees and retirees. The Wisconsin Supreme Court held two statutes pursuant to which nonvested prosecutors could transfer employer contributions, and interest, made on their behalf from the county to the state fund and receive a service credit for county employment depending upon the amount transferred to constitute a "taking" of property without due process of law and prohibited by the 5th Amendment to the U.S. Constitution. In its opinion, the Wisconsin Supreme Court discussed the distinction that the Association

tried to make between some previous Wisconsin judicial opinions and the current case on the basis that the former opinions involved defined contribution systems, whereas the case before the Court involved a defined benefit plan. The Supreme Court noted that “[a]ny pension plan’s ability to meet its obligations can be jeopardized when funds are taken from it, since every dime is arguably part of a management strategy dependent upon spreading the fund’s monies as broadly as possible.”

As previously noted⁹⁸, Montana is not one of the states that subscribes to the “property” theory of protection of public pension money but rather one of the group of states that applies the “contract” theory of protection of those funds. For this reason it’s likely that the Association of State Prosecutors opinion would not be applied per se by Montana courts. Nevertheless, the opinion is helpful in that Montana courts could, by application of the contract theory of protection of actuarial funding as expressed in Board of Administration of the Public Employees’ Retirement System v. Wilson, reach the same conclusion that the value of all contributions to a retirement system, when actuarial funding is required, is so great that members transferring to another retirement plan may not physically take all of those contributions and their earnings with them upon transfer to the new plan.

A note of caution should, however, be raised at this point about the conclusions reached by the court in the Association of State Prosecutors opinion. For whatever reason, the Wisconsin Supreme Court failed to address a significant issue in its opinion. The issue it failed to address is the fact that when a member leaves a retirement system and removes both employee and vested employer contributions from that system, the former member of the system takes with him or her not only pension system assets but system liabilities as well, those system liabilities being the duty of the system to pay the retirement benefit in the amount and at the time specified in the “contract”. Whether a pension system therefore needs “every dime”, as the Wisconsin Supreme Court suggested, to make the system left by the former member actuarially sound depends upon how the assets removed, the assets left behind, and the remaining liabilities of the system are valued. If, for example, the remaining liabilities are no greater than the remaining assets, it is difficult to see how the contract of remaining members would be impaired. For these reasons, valuation of assets and liabilities is critical.

⁹⁸ See footnote no.1 and accompanying text.

C. May future PERS members be required to join a retirement system consisting of a modified DB system with a DC component?

Article VIII, section 15 of the Montana Constitution provides :

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

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

This section of the Montana Constitution was adopted as constitutional amendment number 25 as the result of a 1994 ballot measure. Because of its recent adoption, the meaning of the text of the amendment has not been the subject of any attorney general opinions or reported judicial opinions. The first sentence in (1) essentially incorporates the holding of Board of Administration. The language of the second sentence of (1) essentially means that the state may not use either employer or employee contributions and the income they generate as the basis for a loan, use those contributions and income for any purpose other than payment of retirement benefits, and may not curtail or end altogether the rate of contributions established in statute. These prohibitions seem to apply to both contributions to the current PERS retirement plan and to contributions to any new or modified plan created in the future.

All of the prohibitions contained in Art. VIII, sec. 15 are compatible with the “contract” theory of protection of pension plans adopted by the Montana Supreme Court. However, the breadth of language used in section 15 raises two further questions. These questions are: (1) whether the requirement for actuarial funding applies to all types of future retirement plans and therefore prohibits the creation of a DC plan; and (2) whether the requirements that plan assets be held “in trust” and not be “diverted” or “reduced” prohibit the transfer of an employee’s assets from the current DB hybrid plan to a modified DB plan with DC components, even though the DB plan would continue to be actuarially funded or even though the creation of the DB plan with DC components

and transfer of employee assets to that system constituted a “California rule” modification. As noted, no case history has developed on section 15 because it was only recently adopted. As to the first question, there is no indication in the legislative or ballot measure history of section 15 that the section was intended to prevent the creation of a DB plan with DC components. That issue was simply not addressed in the history of the section. However, taken literally, the language of section 15 would seem to prevent the creation of such a plan. The situation is the same concerning the second question; there is no indication in the section’s legislative or ballot measure history that it was intended to prevent transfer of assets with a member’s consent from the current hybrid DB plan to a modified DB plan with DC components. However, taken literally, the language of section 15 would seem to prevent such a transfer. This seems especially true because of the potential for the adverse effect of the valuation of transferred assets in times of a falling stock market if there is no protection applied to the value of those transferred assets.

Legal Conclusions

The application of Montana Supreme Court opinions, 35 A.G.Op. 4, 39 A.G.Op. 51, the Board of Administration and Association of State Prosecutors opinions, and Article VIII, sec. 15, of the Montana Constitution to the PERS means that:

1. Members of the PERS have a contractual right to retirement benefits. The terms of the contract are probably governed by the laws applicable that were in effect when they became members. However, members of the PERS must await actual retirement before the right to a specific retirement benefit payment becomes fully “vested”.⁹⁹
2. The Legislature may not, without consent of the members of the PERS, make changes to the contractual rights of PERS members to a retirement benefit unless the modification is necessary to make sure that the members have the

⁹⁹ It is believed that the only way that the Montana Supreme Court’s opinions in the Evans and Sullivan cases can be reconciled with the Court’s opinion in Gulbrandson is to say, like the California Court of Appeals in Valdes, that upon commencement of employment a member of the PERS is vested with a nonspecific right to payment of a retirement benefit under the statutes that apply to that member but that the member must await actual retirement for the right to a specific payment to become “vested”.

benefits they contracted for or the amendments are otherwise necessary to strengthen the retirement system.

3. Contributions by or for current members of the PERS retirement plan and any new or modified plan cannot be used for any other purpose than retirement benefits and cannot be used as the basis of a loan or be decreased or terminated for current or future members once established by the employment contract.

4. Members of the current PERS retirement plan who voluntarily transfer from the DB plan to a new or modified plan must, through a system of credits, cash payments, or otherwise, be given credit for benefits earned under the current hybrid DB retirement plan.

5. Members of the current PERS retirement plan and members of a new or modified retirement plan are entitled, both before and after any current members are transferred to that new or modified plan, to have their retirement benefit funded on an actuarially sound basis. Whether this requirement as a practical matter prohibits the transfer of a specific PERS member to a new or modified plan depends upon how the assets of the current PERS that are intended to be moved, the assets of remaining members, and the liabilities that remain behind are valued.

6. The employee contribution required to be made by current members of the PERS retirement plan cannot be increased, whether or not those employees elect to transfer to a new or modified retirement plan, without a corresponding increase in their retirement benefits.

7. No assurance can be given that the language of Art. VIII, sec. 15, of the Montana Constitution would not be construed by a court to prevent the creation of a modified DB plan with a DC component. Likewise, no assurance can be given that the language of the same section requiring retirement system assets to be held "in trust" and prohibiting them from being "diverted" or "reduced", would not be construed to prohibit transfer of a PERS member and the member's retirement trust fund assets from the current DB hybrid plan to a modified DB plan with a DC component.

Summary and Conclusion

The history of public employee retirement systems in Montana goes back more than 100 years, when working conditions were less enviable and life spans much shorter. Over time, legislatures differentiated between and among the different professions and occupations that composed the public employee workforce. As existing systems were revised or new systems set up to address one or more issues regarding the ostensible needs of public employees and public employers, the individual components of the various retirement systems metamorphosed in various ways to address the perceived needs. Along the way, legal challenges arose that precluded legislatures from taking certain actions or required legislatures to adhere to certain legal principles. Thus, the perceived needs of employees and employers and various legal impediments and opportunities have led to the evolution of no fewer than the ten public employee retirement systems that currently operate in Montana.

Perhaps the only factor regarding the state's retirement system that is a virtual certainty is that there will be more changes to come over the next 100 years.

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