

**Agenda Item
IV.**

Executive Director's Report

**E. Options for Addressing
the UAL**

*(Roxanne Minnehan &
Melanie Symons)*

Public Employees' Retirement Board
February 9, 2012

Topic: Addressing the UAL

Staff Recommendation:

The Board continues to maintain and protect the contract right for current members and retirees. Seeking increased employer contributions and or other funding sources.

Board Motion:

- Uphold Staff Recommendation

- The Board limits their impairment of the contract right to increasing employee contributions.

- Other

Moved by

Seconded by

Vote

FIDUCIARY RESPONSIBILITY REFRESHER

("Repetition is a GOOD Thing" – Mary Beth Braitman, Ice Miller)

Melanie Symons
MPERA Chief Legal Counsel
February 9, 2012

Article VIII Sec. 15 Montana Constitution

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

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

Statutes

19-2-403. Powers and duties of board. (1) *The board shall administer the provisions of the chapters enumerated in 19-2-302 [2, 3, 5 – 9, and 13].*

19-2-502. Payments from pension trust funds. (1) *The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.*

(2) *Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership.*

19-2-503. Management of pension trust funds. *The pension trust funds must be managed as follows:*

(1) *The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.*

* * *

Normal cost of the systems must be funded by the employee and a portion of the employer's contributions, if necessary. The unfunded actuarial liability must be covered by the employer.

Duty of Loyalty – Trustees must act impartially, without regard to the entity that appointed the Trustee or any demographic or other group to which the Trustee may belong. Trustees are charged with acting for the exclusive benefit of retirement system members and their beneficiaries.

19-2-505. Restrictions on use of funds. * * *

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

Under the various Constitutional and statutory provisions cited above, the Trustees must act for the benefit of the members of the retirement plans and their beneficiaries. Their responsibility is not to the Governor, the legislature or tax payers.

Duty of Care and Skill (Prudence) – Trustees must exercise reasonable effort and diligence in monitoring the administration of the trust. A trustee may consider information and advice from sources on which prudent fiduciaries rely when acting as a prudent expert.

Duty of Caution (Diligence) – Trustees must exercise the caution of a prudent investor managing similar funds for similar purposes and in similar circumstances.

Actuary Request

All the requests are for the systems that do not amortize, unless specifically stated otherwise. The systems that do not amortize are: PERS, SRS, GWPORS and HPORS. We are also including MPORS* since they are close to 30 years.

Determine Impact of the following:

- Increase Employee & Employer Contributions
 - assume equal continual increases at 0.25% annually, limited to a total of 1%
- Assume \$5M is received annually from the coal tax fund
 - The coal tax fund is available until the funds amortize
- Compensation Definition**
 - remove 125Plan Premiums (\$700/month tremendous impact to system)
 - remove 125Plan Premiums for new hires only
 - Have ER pay actuarial cost of including 125 Plan Premiums (include all systems, not just the plans that are in trouble)
- HAC
 - place cap, salary cannot increase >10% annually
 - increase HAC period to 5 years for current, active members
 - increase HAC period to 5 years for new hires only, **HPORS**
- Non-duty related Disability Benefit Eligibility – Require vesting (5 years membership service)
- GABA –
 - reduce by ½% increments down to 0 for all members (active and retired)
 - provide what portion of NC is attributed to GABA
- Differing Rates of Return Earned i.e. 5, 6, 7, 7¾, 8, 9%
 - Impact on Normal Cost
- Switch to DC Plan – all systems

*For MPORS determine with and without change in comp definition MPPA is proposing.

**MSFA is thinking about joining forces with MPPA, on the compensation definition. We would like the impact with and without the definition changes for FURS as well.

**PERB
Addressing the UAL
February 9, 2012**

- ❖ PERS and SRS have not been receiving the ARC for the past three fiscal years: 2009, 2010 and 2011.
- ❖ GWPORS has not received the ARC for the past two fiscal years: 2010 and 2011
- ❖ HPORS does not amortize in FY 2011

Funding Shortfalls (as a % of Payroll)				
FY	PERS	SRS	GWPORS	HPORS
2004	1.19	2.15	0.23	
2005	1.58	2.69	0.26	
2006	1.01	1.84	0.04	
2007				
2008				
2009	2.35	2.53		
2010	5.01	4.03	3.47	
2011	6.32	5.22	3.80	5.33

*FY 2010 – Actuarial Assumed Rate of Return was decreased to 7¼%

- ❖ Each Legislative Session we have proposed employer increases for each system that does not amortize.
- ❖ The 2011 session saw plan changes for new hires. This was proposed by the Board along with employer increases to increase plan sustainability over the long-term. Employer increases were removed from the bill.
- ❖ Historically, the Board has been a staunch protector of members' contract rights.
- ❖ Last month the Board had a work session to:
 - Receive education on and discuss the Contract Right Issue
 - Ensure the Board understands the ramifications of impairing contract rights
 - Ensure the entire Board supports the decision to protect or impair contract rights
 - Obtain input from stakeholders
 - Provide Direction to Staff and the Legislative Committee for the 2013 Legislature
- ❖ Work Session Take-aways:
 - Board consensus to not propose legislation to impair members' contract rights?
 - The Systems do not have to immediately be actuary sound. But, we need to address the shortfall before it gets out of hand.

- Obtain estimate from Cheiron on the impacts of plan changes, most of which impair members' contract rights (see enclosed Actuary Request).
- ❖ Please consider your individual preference to the questions below, and be prepared to discuss at the Board meeting.

Does the Board wish to protect members' contract right? YES NO
Poll each Board member.

If YES	If NO
<input type="checkbox"/> Does the Board want to request an increase in employer contributions?	<input type="checkbox"/> Does the Board want to propose an increase in employee contributions?
<input type="checkbox"/> Does the Board want to pursue other funding sources?	<input type="checkbox"/> Does the Board want to propose removing 125 Plan Premiums from the compensation definition?
<input type="checkbox"/> Does the Board want to pursue removing 125 Plan Premiums from compensation definition for future ERs?	<input type="checkbox"/> Does the Board want to propose other plan changes (see list provided to the actuary)?
<input type="checkbox"/> Does the Board want to pursue other plan changes for new hires (see list provided to the actuary)?	

**Public Employees' Retirement Board
Retirement Bills Legislative History
2005, 2007, 2009, 2011 Legislative Sessions
As of June 30, 2011**

Article VIII, section 15 of the Constitution of the State of Montana requires the Public Employees' Retirement Board to act as a fiduciary of the retirement system participants and their beneficiaries. That fiduciary responsibility requires the Board to balance several different issues as it considers proposed legislation, including, but not limited to:

- (1) The Constitutional requirement that the funds be actuarially sound (Article VIII, section 15, Montana Constitution);
- (2) The statutory requirement that the Board regularly reviews the sufficiency of benefits and makes recommendations to the legislature on how changes could enable members and their beneficiaries to maintain a stable standard of living (Section 19-2-403(9), MCA); and
- (3) The statutory requirement that the retirement plans remain qualified under the applicable Internal Revenue Code provisions (Section 19-2-1010, MCA), to which the members have a constitutional right under the Contract Clause.

The following bills on which the Board has directed staff to testify during the past three legislative sessions contain a footnote in the "Position" description which indicates on which of the above three considerations that testimony was primarily, if not exclusively, based.

Light orange – identifies actuarial funding related bills
Lighter orange – identifies benefit related bills

PERB Legislative History Table – 2005, 2007, 2009, 2011					
Action	Session	Bill	Description	Position	Rationale
Tabled	2005	HB36	Repay loan for PERS-DCRP startup costs	Support ²	Sponsor (State of Montana) should pay the costs for a new plan design. Because only 3% of PERS members transferred to the DCRP, the repayment schedule is disproportionately harsh on the initial plan participants, impacting their retirement.
Passed	2005	HB 102	Statutory approp for HPORS	Support ¹	Currently, there is no appropriation for Justice to make the transfer from the general fund to the retirement division. Simplified administration.
Passed	2005	HB 105	Provide partial pymt of salary for injured deputy sheriff	Support ²	Consistency with comparable systems. Concern for impact to SRS, suggested amendment.

PERB Legislative History Table – 2005, 2007, 2009, 2011

Action	Session	Bill	Description	Position	Rationale
Failed	2005	HB 148	Provide actuarial funding for retirement systems	Support ¹	Actuarial soundness is required by the Montana Constitution, Board Policy, and audit recommendation.
Tabled	2005	HB 152	Retired FURS COLA	Oppose ¹	Cost. Increases the UAL by \$3,469,000.
Passed	2005	HB 213	General Revisions-MPERA	Support ³	MPERA housekeeping bill to clarify statutes, make provisions easier to implement, changes to comply with federal and tax laws.
Passed	2005	HB 346	Revise employment restriction for retired volunteer firefighters	Support ²	Technical concerns re: injuries and insurance coverage.
Tabled	2005	HB 426	Revise definition of compensation in MPORS	Oppose ¹	Cost. Actuarial impact to system.
Tabled	2005	HB 542	Revise postretirement benefit increases in statewide police pension plan	Oppose ¹	Constitutionality issues. Cost to the system. Increases the actuarial liability to over \$26,900,000; requiring a contribution increase of more than 6%. Increases amortization period from 24.4 years to over 30 – impacts actuarial soundness. Promotes leapfrogging.
Tabled	2005	HB 586	Revise MPORS DROP	Oppose ¹	Cost. Increases amortization period 1 year. MPORS revenue declines by 0.65%. Annual revenue required to support this provision is \$173,000.
Passed	2005	HB 587	Require certain retirement benefits for a minor to be paid to a trust	Support ²	Adequacy of benefits. Sponsor requested our input.
Tabled	2005	HB 644	Allow airport police officers to become members of SRS	Oppose ¹	Lack of clear definition of airport police officers. SRS has a clear definition of sheriff. If they are actually police officers, they should be in MPORS.
Passed	2005	SB 197	Revise pension benefits for VFCA	Oppose ¹	Cost. Increases UAL by \$1.1M. An increase in annual revenue of \$97,233 would be needed.
Passed	2005	SB 254	Revise eligibility requirements for VFCA	Support ²	Consistent with a provision in our general revisions bill.
Passed	2005	SB370	Include detention officers in SRS	Oppose ¹	Increased cost to SRS; increases normal cost 0.54%. Increased administrative confusion.
Tabled	2005	SB 439	Participation by certain employers in FURS	Support ²	Equal job functions should have equal retirement coverage. No unfunded costs for FURS.

PERB Legislative History Table – 2005, 2007, 2009, 2011

Action	Session	Bill	Description	Position	Rationale
Tabled	2005	SB 444	Revise purchase of military service in certain public retirement systems	Oppose ¹	Cost. Adding years of service increases the amount of the benefit. Already a statute that allows purchase of military service in the retirement systems. Fairness issue – previous veterans have already purchased military service at a higher cost.
Tabled	2005	SB 484	Increase retirement benefits for FURS with 25 years or more of service	Oppose ¹	Cost. UAL increases by \$12.4M. Normal cost increases by 2.31%. Amortization period increases by 7.1 years. Annual revenue needed is \$1.2M or an increase in contributions of 5.68%.
Passed	2005	SB 491	Revise benefits and definitions in FURS	Informational	
Passed	2005 Special	HB 1	Appropriate funds for schools, TRS & PERS	Support ¹	Assists with the actuarial funding of PERS.
Passed	2005 Special	HB 2	Expand duties of SAVA interim committee	Support	An interim committee for retirement legislation will reduce the number of retirement bills, duplicate bills and strengthen the retirement systems bills that can be supported.
Failed	2005 Special	HB 6	Retirement systems to prepare annual report	Informational	
Failed	2007	HB 108	State withholding for pensions, annuities and other deferred income.	Informational	
Passed	2007	HB 125	Repay loan for PERS-DCRP startup costs	Support ²	Sponsor (State of Montana) should pay the costs for a new plan design. Because only 3% of PERS members transferred to the DCRP, the repayment schedule is disproportionately harsh on the initial plan participants, impacting their retirement.
Passed	2007	HB 129	Revise retirement laws to conform to federal law and decisions	Support ³	This general revision proposal is revising the retirement provisions administered by the Public Employees' Retirement Board to clarify statutes and make necessary housekeeping and process changes. This also includes any changes required to comply with Federal legislation or rules promulgated by the Internal Revenue Service.

PERB Legislative History Table – 2005, 2007, 2009, 2011					
Action	Session	Bill	Description	Position	Rationale
Passed	2007	HB 131	Generally revise public employee retirement laws.	Oppose ¹²	Diminishes the current plan and creates disparity among members.
Failed	2007	HB 159	Increase employer contribution rates for PERB systems	Support ¹	Public retirement systems are required to be actuarially sound by the Montana Constitution, Article VIII, Section 15.
Failed	2007	HB 544	Allow withholding membership dues from retirement benefit in HPORS/MPORS	Oppose ¹³	Cost is prohibitive, and spending trust fund monies to perform the necessary computer modifications would have been a violation of federal law.
Failed	2007	HB 639	Create volunteer EMT retirement system	Informational	Many unanswered questions and concerns.
Failed	2007	HB 670	Retirement systems reports on actuarial costs and other items	Informational	
Passed	2007	HB 765	Revise retirement laws	Oppose ³	Adverse selection and special interest for a specific individual. Revokes an irrevocable election.
Passed	2007	HB 771	Revise actuarial valuations and reporting for retirement systems	Informational	
Failed	2007	HB 792	Index postretirement GABA for future PERS and TRS members	Oppose ²	Makes the GABA ad-hoc. Does not provide sustainable benefits.
Failed	2007	HB 814	Revise postretirement benefits and increases in MPORS	Oppose ¹	Cost. Increases UAL by \$100M. Promotes leapfrogging.
Failed	2007	HB 824	Exempt military pensions from state income tax	Informational	
Failed	2007	HB 827	Revise pension plans for new hires	Oppose ¹²³	Creates a new DC plan for new hires. Many technical and federal tax qualification issues.
Passed	2007	HJ 59	Study public retirement systems	Support	Provides a legislative guide to be available.

PERB Legislative History Table – 2005, 2007, 2009, 2011					
Action	Session	Bill	Description	Position	Rationale
Passed	2007	SB 11	PERS exemption for legislative session staff	Informational	
Passed	2007	SB 72	Require Senate confirmation of PERB nominations	Neutral	
Passed	2007	SB 168	Transfer public employee accrued leave into post-retirement health care account	Informational	
Failed	2007	SB 197	Divestiture of investments in terrorist nations.	Oppose ³	Federal law requires trust fund money to be used for the exclusive benefit of plan members and their beneficiaries.
Failed	2007	SB 247	Revise minimum benefit in HPORS	Oppose ¹	No funding is included for the benefit enhancement.
Failed	2007	SB352	Exempt 3 rd class cities from firefighter age restrictions	Oppose ¹	Disability rates will increase if the age restriction is limited. Disparity amongst members.
Passed	2007	SB 532	Revise FURS laws	Oppose ¹ Support ²	Opposed 3 out of 4 provisions due to cost; actuarial impact on FURS. Supported fire departments joining FURS. Equal job functions should have equal retirement coverage. No unfunded costs for FURS.
Failed	2009	HB 12	Require employer contributions on working retirees under certain conditions	Support ¹	Helps with the actuarial funding.
Failed	2009	HB 31	Include dispatchers in SRS	Support ²	Benefit sufficiency (fairness) issue. Members electing SRS must pay any out-of-pocket costs to transfer PERS service credit.
Failed	2009	HB 32	Increase benefits and contributions to FURS	Oppose ¹	Cost. Proposed funding does not cover the cost of the benefit enhancement.
Failed	2009	HB 33	Redefine compensation in FURS	Support ²	Promotes consistency across retirement systems. Minimal cost.

PERB Legislative History Table – 2005, 2007, 2009, 2011

Action	Session	Bill	Description	Position	Rationale
Passed	2009	HB 109	General Revisions – MPERA	Support ³	To clarify statutes for the retirement systems administered by the PERB – making changes to reflect PERB and court decisions interpreting state and federal law. Also, to eliminate out-dated provisions, archaic terminology and clarify the statute for the reader.
Failed	2009	HB 124	Reopen GABA enrollment for FURS	Oppose ³	IRS Qualification issue.
Failed	2009	HB 142	Eliminate automatic trigger that decreases employer contribution	Support ¹	Actuary valuation requires and assumes these contributions continue indefinitely. Trigger will not be attained in near future.
Passed	2009	HB 170	Ensuring tax qualification by IRS of certain retirement systems	Support ³	To maintain our qualified plan status under IRS codes. To make the changes necessary to comply with federal retirement law and tax law changes applicable to governmental retirement plans.
Failed	2009	HB 266	Eliminate member contribution requirements for MPORS DROP participants	Informational	
Failed	2009	HB 393	Special contract for city police fund to transfer to statewide retirement plan	Informational	Technical concerns.
Passed	2009	HB 626	Revise transfer from local police retirement plan to statewide system	Support ¹²	The MPORS will not be impacted. Excess liabilities will be received with interest.
Passed	2009	HB 659	SAVA to examine and recommend to the 62 nd legislature funding and benefit changes in PERS and TRS	Support ¹²³	The Board supported examining funding of PERS and possible benefit changes designed to result in an actuarially sound system
Failed	2009	HB 679	PERS to become a Defined Contribution Plan	Oppose ¹²	Changing to a DC plan would not help and would probably hurt the funding of the remaining DB plan. DC plans may not provide as good of benefit to our members as does a DB plan.

PERB Legislative History Table – 2005, 2007, 2009, 2011					
Action	Session	Bill	Description	Position	Rationale
Failed	2009	SB 295	Allow legislators to retire from public employment while serving in the Legislature	Oppose ^{1,2,3}	Qualification issues. Conflicts with HB12.
Failed	2009	SB 372	Revise firefighter laws	Oppose ¹	Impact to system. Possibility of increased disabilities. Disabilities automatically receive ½ pay without vesting and without regard to injury being duty related or non-duty related.
Failed	2009	SB 373	Revise firefighter laws	Oppose ¹	Impact to system. Possibility of increased disabilities. Disabilities automatically receive ½ pay without vesting and without regard to injury being duty related or non-duty related.
Failed	2009	SB 484	Adjust retirement dates for new PERS and TRS hires	Oppose ²	Impact on new hires. Technical and policy concerns. Inconsistent with other types of retirement benefits at age 65.
Passed	2011	HB70	Revise laws related to public employee retirement systems	Support	This was our general revisions bill.
Tabled	2011	HB85	Require employer contributions on working retirees in PERS, SRS, FURS	Support ¹	Helps with actuarial funding
Passed	2011	HB119	Revise laws related to volunteer firefighters' compensation	Support	Our rewrite of the VFCA for clarification and ease of administration
Passed/ Amend	2011	HB122	Provide for benefit and funding changes to public employees' retirement system	Support ^{1,2,3}	Our PERS actuarial funding bill which was amended to eliminate any employer contribution increase
Passed/ Amend	2011	HB134	Provide benefit and funding changes to GWPORS	Support ^{1,2,3}	Our GWPORS actuarial funding bill which was amended to eliminate any employer contribution increase
Passed/ Amend	2011	HB135	Provide benefit and funding changes to SRS	Support ^{1,2,3}	Our SRS actuarial funding bill which was amended to eliminate any employer contribution increase

PERB Legislative History Table – 2005, 2007, 2009, 2011					
Action	Session	Bill	Description	Position	Rationale
Tabled	2011	HB197	Constitutional amendment allowing legislature to change retirement plans	Oppose ^{2,3}	Amending Constitution to eliminate the impairment of contract right is in itself an impairment of contract.
Tabled	2011	HB231	Repeal requirements for municipalities to hire career paid firefighters	Oppose ^{1,3}	Elimination of requirement would reduce membership in FURS, thus reducing contributions and negatively impacting the actuarial funding of FURS
Tabled	2011	HB238	Revise membership of Public Employees' Retirement Board	Track	Substituted a 2 nd retiree for 1 at-large position; different than proposal advanced to Board.
Tabled	2011	HB313	Increase game warden salaries	Support	
Tabled	2011	HB328	Include dispatchers in SRS	Support	Worked closely with dispatchers; believe to be appropriate system for them – 20 year system.
Tabled	2011	HB346	Revise monthly pension payable to volunteer firefighter	Track	Not retroactive.
Passed	2011	HB508	Require payment of partial salary to injured rural firefighter	Track	
Passed	2011	HB552	Provide workers' comp to volunteer firefighters and EMS workers	Track	
Passed	2011	HB587	Provide option for associate water court judge	Track	Membership change – little or no impact
Tabled	2011	HB597	Revise state public employee retirement systems	Oppose ¹	Implement hybrid plan similar to Utah's; huge cost; not beneficial to members; violates contract right
Tabled	2011	HB603	Provide for public charter schools		Impact on PERS if members aren't covered.

PERB Legislative History Table – 2005, 2007, 2009, 2011					
Action	Session	Bill	Description	Position	Rationale
Tabled	2011	HB608	Close retirement systems and provide for annuity benefit program	Oppose ¹	Huge cost; not beneficial to current members. Violates contract right.
Died	2011	HB632	Use spendable portion of coal severance tax to pay down UAL in PERS, TRS, GWPORS and SRS	Support ¹	Addresses actuarial funding issue.
Passed/ not pursued	2011	HJ38	Interim study of local fire protection, firefighters, and EMTS	Track	Clean up of Title 7; clarify membership in firefighter retirement systems
Tabled	2011	SB113	Transfer statutory excess retirement funds in trust by school districts to TRS	Support ¹	Helps to address actuarial funding; perhaps a % to PERS?
Passed	2011	SB120	Require publishing of appointed members to all state agency boards	Support	Further communications between members and Board trustees.
Tabled	2011	SB188	Eliminate and revise statutes related to Administration boards & councils	Track	Impacts Board and EIAC
Passed	2011	SB222	Revise qualifications for firefighters	Track	Possible impact on FURS membership
Passed	2011	SB223	Revise volunteer firefighter pensions	Informational	Address funding issues.
Passed	2011	SB229	Revise laws relating to state-tribal coop agreements act and PERS	Informational	Impact PERS membership; governmental agency issue.
Tabled	2011	SB328	Require PERS new hires to be in DC plan	Oppose ¹	Negatively impacts actuarial funding.

PERB Legislative History Table – 2005, 2007, 2009, 2011

Action	Session	Bill	Description	Position	Rationale

Mission Statement

The Montana Public Employees' Retirement Board, as fiduciaries, administers its retirement plans and trust fund, acting in the best interest of the members and beneficiaries.

**Public Employees' Retirement Board
Work Session – Address Actuarial Funding
January 13, 2012
Constitutional Provisions**

Article VIII, Section 15, Montana Constitution

Section 15. Public retirement system assets. (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.

History: En. Sec. 2, Const. Amend. No. 25, approved Nov. 8, 1994.

Article II, Section 31, Montana Constitution

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. 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.

Article I, Section 10, United States Constitution

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post factor law or law impairing the obligation of contracts, or grant any title of nobility.

**The Public Employees' Retirement Board
Work Session – Address Actuarial Funding
January 13, 2011
MCA Excerpts**

19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

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

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) The board shall enter into memoranda of understanding with the teachers' retirement system to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

(9) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

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

(11) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

(12) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(13) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (12) or the contested case procedure of the Montana Administrative Procedure Act.

(14) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(1); amd. Sec. 5, Ch. 265, L. 1993; amd. Sec. 1, Ch. 481, L. 1993; Sec. 19-3-304, MCA 1991; redes. 19-2-403 by Sec. 238, Ch. 265, L. 1993; (10)En. Sec. 2, Ch. 412, L. 1995; amd. Sec. 7, Ch. 471, L. 1999; amd. Sec. 5, Ch. 562, L. 1999; amd. Sec. 5, Ch. 99, L. 2001; amd. Sec. 4, Ch. 429, L. 2003; amd. Sec. 5, Ch. 99, L. 2011.

19-2-405. Employment of actuary -- annual investigation and valuation.

(1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical adviser of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make an annual actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) **The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.**

(4) (a) **The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.**

(b) **In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203.**

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans. Copies of the report must be provided to the legislature pursuant to 5-11-210.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973; R.C.M. 1947, 68-1804; amd. Sec. 7, Ch. 265, L. 1993; Sec. 19-3-305, MCA 1991; redes. 19-2-405 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 8, Ch. 471, L. 1999; amd. Sec. 49, Ch. 114, L. 2003; amd. Sec. 5, Ch. 285, L. 2007.

19-2-409. Plans to be funded on actuarially sound basis -- definition. As required by Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For purposes of this section, "actuarially sound basis" means that contributions to each retirement plan must be sufficient to pay the full actuarial cost of the plan. For a defined benefit plan, the full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years. For the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member.

History: En. Sec. 5, Ch. 287, L. 1997; amd. Sec. 12, Ch. 471, L. 1999.

19-2-502. Payments from pension trust funds. (1) The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.

(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership.

History: En. Sec. 12, Ch. 265, L. 1993; amd. Sec. 19, Ch. 532, L. 1997; amd. Sec. 2, Ch. 329, L. 2005.

19-2-511. Limitation of liability. (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a participant's or beneficiary's account under a defined contribution plan or an optional retirement program established pursuant to 19-21-101 that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any employer or reporting agency or of any vendor providing services to the defined contribution plan or optional retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or optional retirement program.

(5) Plan fiduciaries are not liable for investment losses incurred in the defined contribution plan or optional retirement program as a result of incorrect reporting by an employer or other reporting agency.

History: En. Sec. 3, Ch. 490, L. 2001; amd. Sec. 1, Ch. 38, L. 2003.