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LEGAL MEMORANDUM

TO: State Administration and Veterans' Affairs Committee and Legislative Finance Committee

FROM: David S. Niss, Staff Attorney

RE: Constitutionality of Amendment of GABA Statutes to Tie Amount of GABA to State Investment Earnings for Current Retirement System Members

DATE: January 5, 2012

I
INTRODUCTION

At the close of my previous presentations at the latest meetings of both the State Administration and Veterans' Affairs Committee and the Legislative Finance Committee, the Committees engaged in a general discussion of whether the Legislature may constitutionally amend the current statutory GABA provisions¹ as they apply to current members of the retirement systems to provide that the amount of the GABA is tied to investment earnings. This memorandum summarizes three previous memorandums on this subject (attached).

II
DISCUSSION

As previously pointed out², the Contract Clauses in both the U.S.³ and Montana⁴ Constitutions are not absolute. They both allow the amendment of existing contracts for important and necessary public purposes because the state never loses its ability to exercise its police power for the welfare of its residents⁵. However, the Montana Supreme Court has never substantively applied that general theory of contract and

¹Sections 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011, MCA.

²August 14, 2009, Memorandum, text, page 4, and footnote 12.

³Art. I, sec. 10, cls. 1.

⁴Art. II, sec. 31.

⁵See text, page 2.

constitutional law to public employee retirement pension contracts⁶. In order to allow the amendment to the GABA statutes as to existing members of the retirement systems, the Montana Supreme Court must follow the theory of contract amendments announced by the U.S. Supreme Court in U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), cited on page 6 of the August 14, 2009, memorandum, and hold that either (1) the change in the GABA to make its payment dependent upon investment earnings is not a "substantial" impairment of those contracts, or (2) if the impairment is substantial, it is nevertheless reasonable and necessary under the circumstances⁷. However, because the Montana Supreme Court has adopted the rationale of the U.S. Trust Co. opinion regarding other types of contracts, it would be prudent for the Legislature to deal with that part of the U.S. Trust Co. opinion that holds that the state may not amend its own contracts ahead of other alternatives that do not involve an impairment of contracts in order for the Legislature to reach its goal. In the U.S. Trust Co. opinion, the U.S. Supreme Court said:

[W]ithout modifying the covenant at all, the States could have adopted alternative means of achieving their twin goals of discouraging automobile use and improving mass transit. Appellees contend, however, that choosing among these alternatives is a matter for legislative discretion. But a State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives.

The reason for the Court's holding, it explained, was that if the law were otherwise, a state could avoid its lawful contractual debts by reasoning that the money could be better used elsewhere.

The Montana Supreme Court has adopted this holding in the U.S. Trust Co. opinion when an impairment of a state's own government contract is at stake. Neel v. First Fed. S. & L Ass'n, 207 Mont. 376, 675 P.2d 96 (1984), Buckman v. Mont. Deaconess Hosp., 224 Mont. 318, 730 P.2d 380 (1986), Billings v. County Water Dist., 281 Mont. 219, 935 P.2d 246 (1997), Seven Up Pete Venture v. St., 2005 MT 146, 327 Mont. 306, 114 P.3d 1009. The analysis and holding in the U.S. Trust Co. opinion means that if there is more than one alternative for the resolution of an issue involving a state contract that does not require an impairment of that contract, the alternative that does not impair the contract must be the alternative chosen by the state ahead of the

⁶As previously discussed in the August 28, 2009, Memorandum, the Montana Supreme Court came close in one sentence of its opinion in Gulbrandson v. Carey, 272 Mont. 494, 901 P.2d 573 (1995), but ultimately held that the retirement benefit statute in question did not apply to the plaintiff because the statute took effect after the plaintiff retired.

⁷The Montana Supreme Court "must" follow this reasoning because, as pointed out in footnote 8 of the August 14 Memorandum, the Court has held that the Montana and federal contract clauses are interchangeable and that federal case law allowing interference with contracts is therefore of precedential value in Montana. See. E.g., Butte v. Roberts, 94 Mont. 482, 23 P.2d 342 (1933) and Neel v. First Fed. S & L Ass'n, 207 Mont. 376, 675 P.2d 96 (1984).

alternative that does impair the contract. Thus, for example, in Condell v. Bress, 983 F.2d 415 (2d Cir., 1993), the U.S. Court of Appeals for the Second Circuit addressed a "payroll lag" of 5 days for existing employees adopted by the New York Legislature as a money-saving device in the face of a budget deficit estimated at \$1.005 billion. Other alternatives such as tax and revenue anticipation notes, levying new taxes, raising rates on existing taxes, or laying off executive branch employees existed, but these alternatives were rejected by the New York Legislature as "unwise social policy". Of that choice by the Legislature, the U.S. Second Circuit said:

It cannot be said that a lag payroll for only judicial employees was *essential* in order to finance the expansion of the court system. The state could have shifted the seven million dollars from another governmental program, or it could have raised taxes. We recognize that neither alternative would have been popular among politician-legislators, but that is precisely the reason that the contract clause exists--as a "constitutional check on state legislation." In fact, the lag payroll scheme smacks of the political expediency that *United States Trust Co.* warned of: "A governmental entity can always find a use for extra money, especially when taxes do not have to be raised."

In a 1994 opinion on a similar subject, the West Virginia Supreme Court held that a reduction in a cost of living allowance for state troopers from 3.75% per year to 2% per year for troopers currently employed by the state constituted a substantial impairment of the troopers' employment contract and that the reduction in the COLA constituted an unconstitutional impairment of contract under the rationale of the U. S. Trust Co. opinion. The Court said:

Having read the actuarial studies submitted by respondents, this Court acknowledges the legitimacy of the respondents' concern regarding the future solvency of the public safety pension system. Nevertheless, our holding here still allows the legislature to purchase pension rights of some active employees. Furthermore, the legislature may completely amend pension benefits as they involve persons who may someday *in the future* enter into a public safety employment contract with the state.

Booth v. Sims, 193 W. Va. 323, 456 S.E. 2d 167 (1994).

Because this precise issue has not yet been addressed by the Montana Supreme Court, the Court might, in the alternative, adopt the approach taken by the California appellate courts, reviewed on pages 5 and 6 of the August 14 memorandum⁸.

⁸The California appellate courts, applying what other states refer to as the "California rule", apply more of a balancing test to determine whether a contract may be impaired. This approach has not been followed by many other states. The California courts weigh many other factors in determining whether a contract may be impaired. See the list of factors considered by those courts appearing at page 6 of the August 14, 2009, memorandum.

Regardless of which approach is used by the Court, alternatives to the impairment of pension benefit contracts of existing members of a retirement system covered by a GABA are a factor that the Legislature should prudently consider in order to ensure that any legislation is held to be constitutional by the Montana Supreme Court.

III CONCLUSION

The Contract Clauses of the U.S. Constitution and the Montana Constitutions are not absolute. Exceptions to the prohibition against impairment of contracts do exist. The Montana Supreme Court has, as previously explained⁹, adopted the rationale of the U.S. Supreme Court regarding exceptions to the impairment of contracts and even the rationale of the U.S. Supreme Court regarding impairment of the state's own contracts. How the Montana Court will apply the analysis and reasoning in the U.S. Trust Co. opinion to public employment pension benefit contracts remains to be seen. However, if the Legislature intends to change the current GABA to tie it to investment earnings, it would be prudent for the Legislature to: (1) document that that change is not a "substantial" contract impairment, and (2) document why the change in the GABA must be enacted before all other alternatives that do not impair contracts are utilized.

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⁹ August 14, 2009, Memorandum, text, page 4, and footnote 12.

- Montana Watchdog - <http://montana.watchdog.org> -

Teachers' Retirement System releases pension information

Posted By [Phil Drake](#) On February 1, 2012 @ 7:56 pm In [Featured](#) | [1 Comment](#)

By PHIL DRAKE

HELENA – The **Teachers' Retirement System** (TRS) on Wednesday released state retiree pension information to the **Montana Policy Institute** ^[1], providing employer contribution data for more than 8,800 retirees in the TRS system.

An initial review shows that five of the top 10 pension contributions are for former **University of Montana** employees. Those state contributions ranged from \$267,708 to \$325,569. The top was a total \$484,029 for an employee who served 32 years with **Billings Public Schools**.



[2]

On the low end, one retired employee received \$1,592 in pension contributions for 6.59 years of service with **Scobey** schools.

MPI plans to make the data available to the public soon.

"We will go through the data and make sure we present the information in a fair and accurate way," said **Carl Graham**, MPI chief executive officer. He said he expected the information to be accessible to the public in about 30 days.

In 2010, **Montana Watchdog**, which is published by MPI, made the initial request for the information to the **Montana Public Employee Retirement Administration** ^[3](MPERA) and the **TRS** ^[4]. **Attorney General Steve Bullock** ruled in favor of making the information public. TRS, PERA, and MPI subsequently worked together to provide data that complies with taxpayers' right to public information while respecting privacy rights of retirees, with MPI paying the costs of reprogramming state computers to create the custom reports. The information, when posted, will include retiree names, the state or local entity they last worked for, years of service and the amount the employer paid into the system over their career.

The information provided will not be the full pension the employee receives, but only the state's contribution. It was a decision reached after discussions between **David Senn**, executive director of the TRS, **Roxanne Minnehan**, executive director of the MPERA and MPI.

However, the TRS and MPERA boards gave both their staffs permission to ask a District Court to rule on state **Bullock's** opinion if necessary.

Montana Policy Institute is awaiting the information from MPERA.

TRS officials said the information is an estimate of the total employer contributions made to Montana Teachers' Retirement System to help fund retirement benefits for Montana's public educators.

According to TRS: "While TRS believes the estimate is close to the amounts contributed by the member's employer prior to retirement, in a small number of cases the amount shown may be more or less than the actual contributions received by the System. Because employer contributions are a product of the individual's salary, the amount contributed by the employer for two members with exactly the same number of years of service can be significantly different."

Article printed from Montana Watchdog: <http://montana.watchdog.org>

URL to article: <http://montana.watchdog.org/2012/02/01/teachers-retirement-systems-releases-pension-information/>

URLs in this post:

[1] Montana Policy Institute: http://www.montanapolicy.org/main/page.php?page_id=5

[2] Image: <http://montana.watchdog.org/contribute/>

[3] **Montana Public Employee Retirement Administration** : <http://mpera.mt.gov/index.shtml>

[4] **TRS**: <http://www.trs.mt.gov/>



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February 18, 2011

Mr. David L. Senn
Executive Director
Teachers' Retirement System
State of Montana
1500 Sixth Avenue
Helena, MT 59620-0139

Defined Contribution Plan Proposals

Dear Dave:

At your request, we are writing to describe the actuarial impact of potential legislation to place all new hires in defined contribution (DC) plan will have on the Montana Teachers' Retirement System (TRS).

BACKGROUND

The current TRS plan is an Internal Revenue Code (IRC) qualified defined benefit (DB) plan. A DB plan provides a guaranteed lifetime benefit at retirement based on a formula that reflects salary history and service with a covered employer. In contrast, a DC plan does not provide for a guaranteed lifetime benefit. A DC plan is funded by employer (and possibly employee) contributions. These contributions accumulate with actual investment earnings, and the participant's annual retirement income is whatever the accumulated assets can provide over the retiree's lifetime.

In general, DB plans do a better job of providing retirement income whereas DC plans are better at creating retirement savings. Because of the 2008-2009 market downturn, the current approach in the public sector is to consider *replacing* a DB plan with a DC plan. However, there are compelling funding reasons to view them as complementary vehicles that should be offered together.

The ultimate goal of any retirement program is to provide adequate retirement benefits to career employees when they reach normal retirement age. DB plans are the superior vehicle for achieving this goal, as they provide lifetime benefits, and do so in a more cost-effective manner - for any level of employer contribution, a DB plan will provide a greater benefit to a retiree than will the same employer contribution to a DC plan. This is demonstrated on the following page.

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For all pension plans, whether defined benefit or defined contribution, the basic retirement funding equation is:

$$C + I = B + E$$

Where:

- C = employer and member contributions
- I = investment income
- B = benefits paid
- E = expenses paid from the fund, if any.

The underlying message is that dollars in have to equal dollars out. When comparing a DB plan and a DC plan with identical employer contributions ("C"), if investment income ("I") and expenses ("E") are the same, then the *total* benefits ("B") paid from the plans must be equal. However, DC plans are designed to allow members terminating from service prior to retirement to withdraw their account balances which include employer contributions. By contrast when a member terminates prior to retirement under a DB plan with no right to a vested benefit, the employer contributions remain in the system.

Therefore, under a DC plan the benefit paid to a member who terminates prior to retirement is higher than under a DB plan. As a result, a DB plan retains a higher proportion of overall contributions as system assets when members terminate and withdraw prior to retirement; and a decision to move from a DB plan to a pure DC plan will provide lower benefits to employees who serve the citizens of the State for their career, and higher benefits for those employees who terminate after a short period of service in the State.

CURRENT DB/DC ENVIRONMENT

The DB/DC debate has been going on in the public sector for more than a decade. In that time, a number of states have created DC plans for some or all of their employees, including Alaska, Colorado, Florida, Michigan and South Carolina. Others, such as Georgia, Indiana, Oregon and Washington created combined DB/DC plans. Ohio established both a standalone DC plan and a DB/DC combination plan.

A few states, such as Michigan and Washington, offered a choice between the current DB plan and the new DC plan to only existing members. However, the most common approach taken by these states was to offer a choice to both existing members and new hires. Some, like Florida and Ohio, went so far as to allow members to change their elections at specified times in the future.



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The experience of the States that offered a choice between a DB plan and a DC plan indicates employees much prefer the DB plan. As well, some states with DC plans have studied the benefits being provided to their members and the employer contribution level, and have concluded that the DC plans are not meeting their retirement goals and are too costly to the employer. Nebraska switched members of the State Employees Retirement System and the County Employees Retirement System from a DC plan to a DB plan. West Virginia recently did the same for participants in the Teachers Retirement System.

ISSUES AFFECTING TRS

In considering whether to establish a DC plan for Montana TRS, there are a number of issues to keep in mind. Foremost is that the current pension benefits may be contractual obligations of the State and may be protected by statute as well as the state constitution. As a result, it may not be possible to cut back or eliminate retirement benefits for existing members. Typically, as is the case with the proposed legislation, changes would only apply to new hires. The current unfunded liabilities for TRS will remain unchanged.

Since new hires will not be joining the current DB plan, the payroll base of the DB plan will begin to decline immediately, so less money will be available to pay down the unfunded liabilities (UAL). Since that base is used to fund the Systems' unfunded accrued liabilities (UAL), the financial burden as a percent of payroll will increase. This will be compounded by Governmental Accounting Standards Board requirements under Statements 25 and 27 to change the payroll growth assumption in financing the UAL to a 5% declining payroll methodology. The impact of this change is in Column A of the attached chart.

The System's stated funding policy is to amortize the unfunded liability over a 30 year period. If TRS were closed to new entrants, as a result of this legislation, we would recommend shortening the amortization period to match the future remaining working lifetime of the active members with the intent of completely amortizing the UAL by the time the last active member retires from the System. On this basis we recommend an 11 year closed amortization period. The impact of this change is in Column B of the attached chart.

The final thing to consider is that the cash flow of TRS would become progressively more and more negative throughout future years. The effect is due to a greater reduction in contributions in future years relative to the reduction in the amount of future benefit payments. Most all mature, ongoing DB plans experience negative cash flow. However, the degree of negative cash flow is usually limited due to new hires replacing those retiring and maintaining a stable flow of incoming contributions. A concern with negative cash flow is that when the degree of negative cash flow exceeds income attributable to interest and dividends earned on the invested assets, assets must be sold to satisfy the need the cash, further reducing the investment return of the System. If legislation to move all new hires to a DC plan were to pass, we recommend close monitoring of cash flow to maintain the alignment of the investment strategy with the short and



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long term needs of the System to pay benefits. To demonstrate this fact we have provided the results based on a 4.50% assumed rate of return compared to 7.75% which is currently assumed for the ongoing plan. The impact of this change is in Column C in the attached chart.

Finally, the administrative burden will increase substantially if a DC plan is created. Staffing will have to increase significantly to handle the additional duties of managing the DC plan along with the existing DB plan. DB and DC plans are fundamentally different, so the skill sets that are needed to administer the plan are not the same. In addition, there will be greater communication needs, not only for educational purposes, but also for participant access to the DC plan's account information.

COST IMPACT ON TRS

The employee population covered by a DC plan will be very slow in developing. As a result, even without the added cost factors noted below, it will take many years before the State may begin to realize any cost savings anticipated by creating a DC plan.

In fact, initially employer costs will increase. As noted in a recent National Conference on Public Employee Retirement Systems (NCPERS) white paper:

“A DC plan must be designed, vendors must be selected, and its operation must be monitored. In addition, employees must be informed about plan features and available investments. Staff time is spent throughout the process, and the sponsoring government must pay additional legal and consulting fees. If a third-party administrator is not hired to administer the plan, the government must do this as well. Even if a third-party administrator is hired, the government will still have operating costs related to the DC plan, possibly ranging in the millions of dollars. For example, the budget for the State of Florida's DC plan, established in 2000, totaled \$89 million from FY 2001 through FY 2004. This includes \$55 million to educate Florida's 650,000 government employees about the new plan.”

In the short term, closing the DB plan to new entrants will require a change in the method used to finance the UAL. Since the UAL does not change when the DB plan is closed, and does not decrease significantly even if existing members are given the option of moving to the DC plan, changing the method will increase the contribution required, at least in the near term. The table provided in Attachment A provides an estimate of the impact on the TRS based on the discussion above. The figures are based on the July 1, 2010 valuation. In the long term, following conversion to a DC plan for new hires, DB plan costs are expected to rise due to the shift in the investment strategy of the remaining asset pool in which benefits will be paid to DB plan participants.



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On an ongoing basis, there are additional costs that must be paid for either by the employer or the employee. Administrative expenses are greater for the reasons noted above. Investment expenses are much greater in a DC plan. This is due to the higher cost structure of mutual funds, the typical DC investment vehicle, compared to investment management firms used by DB plans. The NCPERS white paper mentioned earlier noted "According to the Investment Management Institute, the operating expense ratio for DB plans averages 31 basis points (31 cents per \$100 of assets) compared with 96 to 175 basis points for DC plans."

CONCLUSION

DC plans are not a panacea. They do provide features not usually found in DB plans, such as portability, investment choice, personal responsibility and lump sum payouts. However, DC plans do not offer the many advantages of a DB plan such as pre-retirement death and disability benefits, post-retirement inflation protection, lower expense ratios and higher average investment returns.

Establishing a DC plan in the State will increase total TRS employer costs in the future, until the employee population is predominantly covered by the DC plan. In order to possibly create these future cost savings, the State will have to lower retirement benefits for the teachers in the DC plan. This in turn will lead to degradation in retirement security for teachers and will negatively affect the overall the State economy.

Certification

This is to certify that the independent consulting actuary is a member of the American Academy of Actuaries and has experience in performing valuations for public retirement systems, that the valuation was prepared in accordance with principles of practice prescribed by the Actuarial Standards Board, and that the actuarial calculations were performed by qualified actuaries in accordance with accepted actuarial procedures, based on the current provisions of the retirement system and on actuarial assumptions that are internally consistent and reasonably based on the actual experience of the System.

Sincerely yours,

Handwritten signature of Edward A. Macdonald in cursive.

Edward A. Macdonald ASA, FCA, MAAA
President

Handwritten signature of Todd B. Green in cursive.

Todd B. Green ASA, FCA, MAAA
Principal and Consulting Actuary

Attachment A
All Dollar Values are in Millions



	(A)	(B)	(C)	
	July 1, 2010 Valuation	Decreasing Payroll Amortization	Decreasing Payroll Amortization Over the Future Working Lifetime	Long Term Impact Reflecting 4.50% Assumed Rate of Return
Present Value of Future Benefits	\$ 5,115.9	\$ 5,115.9	\$ 5,115.9	\$ 8,440.5
Present Value of Future Normal Cost	(597.7)	(597.7)	(597.7)	(1,783.1)
Actuarial Accrued Liability	\$ 4,518.2	\$ 4,518.2	\$ 4,518.2	\$ 6,657.4
Actuarial Value of Assets	2,956.6	2,956.6	2,956.6	2,956.6
Unfunded Actuarial Accrued Liability (UAAL)	\$ 1,561.6	\$ 1,561.6	\$ 1,561.6	\$ 3,700.8
Total Normal Cost Rate	9.74%	9.74%	9.74%	22.04%
Employee Contribution Rate	7.15%	7.15%	7.15%	7.15%
Employer Normal Rate	2.59%	2.59%	2.59%	14.89%
Employer Statutory Contribution Rate				
Normal Rate	2.59%			
UAAL Amortization Rate	7.37%			
Total Rate	<u>9.96%</u>			
Amortization Period (Years)	49.5			
Actuarially Determined Contribution Rate				
Normal Rate	2.59%	2.59%	2.59%	14.89%
UAAL Amortization Rate	9.57%	23.77%	31.21%	47.91%
Total Rate	<u>12.16%</u>	26.36%	33.80%	62.80%
Amortization Period (Years)	30	30	11	11
Annual Payroll Growth/(Decrease) Assumption	4.5%	(5.0%)	(5.0%)	(5.0%)

Dec P/R
Cashflow needs
Asset alloc Δ

15-20
BY break even
not exp for new members

of P/R is dec

Pension Dialog

some facts about the nation's state and local government retirement system community

Commentary In the News Retirement Security Across the Country Sky is Falling

January 31, 2012

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Response to a "Worse-Case" Pension Scenario with an Accurate One in Minnesota

by Adly Dewey



The Minneapolis *Star Tribune* recently ran two editorials giving a point / counterpoint on the state's public pension system.

On one side is the Mark Haveman, executive director of the Minnesota Taxpayers Association, challenging the state pension plans' investment return assumptions and the plans' overall sustainability. Mr. Haveman writes:

While public pensions lack certainty, there's no shortage of risk. Risk to public services, when pensions need more government resources. Risk to future taxpayers, as courts have consistently ruled that benefits promised under these plans must be paid. Risk to current public employees, as higher contributions eat into take-home pay even as the long-term sustainability of today's benefit levels becomes more doubtful.

On the other side are the board chairs of the three statewide systems: Thomas Marshall, Mary Benner, and Martha Lee Zins. Following is their response in its entirety, re-printed with permission from the authors.

We agree with the Minnesota Taxpayers Association ("A worse-case scenario," Jan. 22) that pension reform should not be based on envy or hostility toward dedicated public employees, but rather should be rooted in principles of sustainability, sound management and good government.

However, to rely on this group as the definitive source of information on the state pension system's financial status is to have a distorted view of the plans' health.

As trustees of statewide retirement systems that serve half a million Minnesota public employees, we have worked hard with legislators, unions, retirees and active workers to ensure that the "worse-case scenario" envisioned by the Taxpayers Association never happens.

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We take our fiduciary responsibility to Minnesota taxpayers and public employees very seriously. We continually monitor the funds' health and the actuarial assumptions that undergird our projections.

It is in that spirit of stewardship that we asked the **Legislative Commission on Pensions and Retirement** in 2009 for support in developing reform legislation to ensure that the state's pension plans are sustainable for present and future retirees and are a stable element of Minnesota's economy.

It took extraordinary bipartisan effort at the State Capitol and shared sacrifice on the part of active and retired public workers, but in 2010, a pension reform bill was passed that saves the state and local governments \$5.9 billion and has already had a dramatic positive impact on the three statewide systems — the Public Employees Retirement Association (PERA), the Minnesota State Retirement System (MSRS) and the Teachers Retirement Association (TRA).

It is in Minnesota's best interest to let these reforms continue to work to improve the funds' financial status.

You've read the "worse-case scenario." Here is the accurate scenario:

- The funded ratios for all three systems have increased significantly since 2009. PERA's general fund has improved from 53.8 percent in 2009 to 76 percent in 2011. MSRS has gone from 65.6 percent funded to 87 percent funded.

And TRA has jumped from 59.8 percent funded to 78 percent. Cost-of-living adjustments for PERA and MSRS members have been lowered until the plans are 90 percent funded; at TRA, the adjustments were withheld for two years, then will also be lowered until the plan is 90 percent funded.

As recently as 2007, MSRS was 99 percent funded and TRA was 93 percent funded. The losses that the systems experienced as a result of the severe downturn were not different from what other investors experienced.

- We're different here. Many of the states making headlines for being in deep trouble with their pension plans — including Rhode Island and Illinois — did not attend to their financial problems in a timely manner, and many did not require employees to substantially contribute to their plans.

In Minnesota, public employees have always contributed nearly half of the required funding. Within PERA, active members are required to contribute 6.25 of their pay; within the MSRS, 5 percent, and within the TRA, 6 percent (rising in 0.5 percent increments annually until the rate reaches 7.5 percent).

- Many states are just now getting around to raising their normal retirement ages, which typically have been age 60 or 62. The normal retirement age in Minnesota has been 66 since 1989. As with Social Security, there are penalties for early retirement.

Minnesota public-sector retirees are self-sufficient members of our

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communities who are able to pay taxes, support Minnesota businesses and contribute to Minnesota charities. Spending by public retirees generates \$738.3 million annually in federal, state and local tax revenue.

Public retiree spending supports \$4.5 billion in total economic output in Minnesota and supports 31,274 jobs that paid \$1.8 billion in wages and salaries. Each dollar paid out in public pensions supports \$1.43 in economic activity in Minnesota, according to the National Institute on Retirement Security's 2009 state-by-state "Pensionomics" analysis.

- Without the modest pension that Minnesota's public employees receive, many would be forced to rely on taxpayer-supported public assistance.
- The Legislative Commission on Pensions and Retirement has begun discussions on "hybrid" retirement plans but has not yet designed the features of such a plan for Minnesota. That will be a challenge, because Minnesota already has a lower-cost pension plan compared with those in states that have moved to hybrids.

While it's true that Minnesota's investment return assumption is higher than many states' at 8.5 percent, the State Board of Investment has exceeded that rate in 20 of the past 31 years, averaging more than 10 percent a year during that period.

None of us would deny that we are in a moment of deep pessimism and uncertainty in the financial markets. But managing retirement plans requires that we refrain from short-term panic and take a patient, long-term view as investors.

Minnesota can be proud of a public employee pension system that is low-cost compared with those in other states and proactive about correcting pension issues before they become problems.

But while we continually monitor funding ratios and investment return assumptions, we shouldn't lose sight of some big-picture issues.

There's a retirement crisis brewing in this country, and some would advocate a race to the bottom in which every worker is income-insecure in their older years.

Rather than argue that public-sector workers — most of whom are paid less than their private-sector counterparts — don't deserve a pension, perhaps we should be asking this:

"Don't private-sector workers deserve a secure retirement, too?"

Thomas Marshall is president of the PERA board of trustees. Mary Benner chairs the MSRS board of directors. Martha Lee Zins is president of the TRA board of trustees

income retirement savings
 return rate assumptions ^{state}
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OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

TO: Executive Branch Officers
Department Directors
Chairs and other Presiding Officers of All Executive Branch Boards,
Bureaus, Commissions, Departments, Authorities, and Agencies

FROM: Governor Brian Schweitzer

DATE: November 1, 2011

RE: Public participation in agency decisions pursuant to § 2-3-103, MCA

Montana's public participation laws require me, as Governor, "to ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state" adopts rules, setting forth policies and procedures to facilitate public participation in agency programs and decisions. Sec. 2-3-103(2), MCA. I have written you in past years to remind you of these statutory obligations, and I take this opportunity to remind you of them again.

Montanans have a constitutional right to participate in the activities of their government. The "Right of Participation" is found at Article II, section 8 of the Montana Constitution, which provides:

The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

This important constitutional right is implemented by Montana statutes (Title 2, chapter 3, part 1, MCA) that require every agency (defined in § 2-3-102(1), MCA), to develop procedures to permit and encourage public participation in agency decisions "that are of significant interest to the public." Sec. 2-3-103(1), MCA. The statutes require agencies to provide adequate notice to the public and assist public participation. Meeting agendas must include an item allowing public comment on any public matter not on the agenda but within the agency's jurisdiction. Additionally, the agency may not act on any matter that was not included on the agenda and for which public comment on the matter was not allowed. Public comments must be incorporated into the official minutes of the meeting. The district courts may set aside agency decisions not in

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conformity with the public participation laws where a person's rights have been prejudiced. Model rules to implement these laws are found at ARM §§ 1.3.101 and 1.3.102.

As you know, this Administration takes very seriously the public's right to participate in the decisions of government, and I applaud your efforts to ensure this public right. If you or your agency needs assistance in crafting appropriate guidelines and rules to conform to Montana's public participation laws, feel free to contact my legal counsel, Ann Brodsky, for assistance (direct line, 444-3558).

MPERA Webinar Schedule/February 2012

Monday	Tuesday	Wednesday	Thursday	Friday
		1 Building a budget Blueprint - 12:00 pm	2 Retirement Planning - Millennial's - 12:00 pm PERS School District Employer Review - 1:00 pm	3 5 Ways to Improve your Finances - 12:00 pm
6 Tax benefits of Participating in your 457(b) Plan - 12:00 pm	7 Building an Investment Strategy for your Defined Contribution and Deferred Comp. 457(b) Plans - 12:00 pm	8	9 Increasing Contributions to your 457(b) Plan - 12:00 pm	10 Managing Market Volatility - 12:00 pm
13 Steps to Retirement - 12:00 pm	14	15 Avoiding ID Theft - 12:00 pm Retirement Planning - Baby Boomers - 3:00 pm	16 New Member Plan Election - 12:00 pm Supplement your Retirement-Def. Comp. 457(b) Plan - 7:00 pm	17 Building a budget Blueprint - 12:00 pm
20 Holiday	21 Financial Wellness - 12:00 pm New Member Plan Election - 7:00 pm	22 Supplement your Retirement-Def. Comp. 457(b) Plan - 12:00 pm	23 Retirement Planning - Millennial's - 12:00 pm	24 Exploring Distribution Options for your DC and 457(b) Plans - 11:30 am
27 PERS State/Local Govt. Employer Review - 1:00 pm Steps to Retirement - 7:00 pm	28 Avoiding ID Theft - 12:00 pm Game Wardens & Peace Officers-Steps to Retirement - 3:00 pm	29		

MPERA provides informative workshops for its members who are either new to the workforce, seeking ways to supplement their retirement and/or ready to retire after years of hard work.

Click on the webinar you wish to attend about 5 to 10 minutes before the scheduled start time to enter the workshop and sign in as a guest. You do not need a password.

Presented by MPERA

(PERS) New Employee - Plan Election - It's never too early to plan your future. This seminar will provide you with an overview of the retirement plan options available to you. Plan for your future today!

(PERS) Defined Benefit - Steps to Retirement - Are you a (PERS) Defined Benefit member who is ready to retire within the next 5 years? If so, attend our Steps to Retirement presentation to get information you need to make fully informed decisions about; preparing for retirement, retirement eligibility, purchasing service credit, and the retirement process.

(GWPORS)-Steps to Retirement - Are you a Game Wardens and Peace Officers Retirement System member who is ready to retire within the next 5 years? If so, attend our GWPORS-Steps to Retirement presentation to get information you need to make fully informed decisions about; preparing for retirement, retirement eligibility, purchasing service credit, and the retirement process.

(SRS) Steps to Retirement - Are you a Sheriffs Retirement System member who is ready to retire within the next 5 years? If so, attend our SRS-Steps to Retirement presentation to get information you need to make fully informed decisions about; preparing for retirement, retirement eligibility, purchasing service credit, and the retirement process.

Presented by Great -West Retirement Services

Retirement Planning- Action Plan for Baby Boomers - This seminar is an action plan for "baby boomers" that are ready for some financial freedom during retirement. It will provide you with the "steps to prepare" for retirement. This seminar will cover topics such as; retirement planning, social security benefits and much more.

Building an Investment Strategy for your Defined Contribution and Deferred Compensation 457(b) plans - Are you ready to manage your account and build on those investments? This seminar will provide you with the tools to take charge and manage your account for your future! The tools explored are; creating a retirement savings goal, allocating

investments among the asset classes, diversifying investment options within each asset class and reviewing your portfolio periodically. Manage your account for your future!

Managing Market Volatility - Market volatility is a fear that all investors feel as Wall Street fluctuates. If you are a participant in the Deferred Compensation 457(b) plan or the Defined Contribution plan, this seminar is for you. The seminar will help you develop a plan to manage risk.

Retirement Planning- Action Plan for Millennial's - Congrats, you got the position you were seeking, the next step is planning for retirement! Why now, you ask? Every 3000 miles or 3 months you change the oil in your car, why? We plan to change our oil to avoid the cost of a new engine, so why not plan to retire comfortably? It's never too early to start planning and this seminar will provide you the tools to build your retirement.

Increasing Contributions to Your Deferred Compensation 457(b) Account - Are you ready to increase your contribution and manage your account for the future? This seminar explores the vital steps towards building your Deferred Compensation 457(b) plan and taking the first step in developing your account for your future!

Exploring Your Distribution Options for Your Defined Contribution and Deferred Compensation 457(b) Accounts - Exploring the possibility of withdrawing your account? Whether you are moving on to a new position or severing employment, these decisions are important and require some planning. Within this seminar, you will discover; options available, tax consequences and benefits of maintaining your money in a tax-deferred investment.

Tax benefits of participating in a Deferred Compensation 457(b) plan? - Exploring the possibility of joining a deferred compensation plan and supplementing your pension? This seminar will analyze the tax benefits of participation, including before-tax contributions, tax-deferred growth and the saver's tax credit.

Retirement Planning- Action Plan for Women - With all of the gains women have made - especially in the workplace - it might seem like a step backward to ask whether saving for retirement is different for women than for men. But what are the facts? Are women at a disadvantage when it comes to planning and saving for retirement? And how do their relationships affect their retirement planning? Are you an equal partner in your financial decisions?

Supplementing your Retirement: the State of Montana's Deferred Compensation 457(b) Plan - Many of us envision retirement as a reward for years of dedication and hard work, but did you know that experts predict you will need to replace at least 77%-94% of your pre-retirement income? The state of Montana Deferred Compensation 457(b) plan can help you reach your retirement goal. It's easy. You can enroll for as little as \$10/month and your contributions are made pre-tax through payroll deductions. Plan for your future today!

Presented by Rocky Mountain Credit Union –Karleen Hansen

Financial Check Up: How's Your Financial Wellness? - How finances affect your mental and physical health/ the ways finances affect your job and ideas on how to become financially fit.

Don't be a Victim - Fighting Back Against Identity Theft - What is identity theft? How does it happen? Deter Detect, Defend and where to go for help.

Building a Budget Blueprint: Benefits and consequences of a budgeting worksheet and tips to decrease spending

5 Ways to Improve your Finances: Best use of your savings and checking accounts with budgeting made easy. Learn how to manage your credit cards by reducing loan payments and consolidating your debt.