

Montana
Public Employees' Retirement Board

Code of Conduct

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Montana Public Employees' Retirement Board

Code of Conduct

Introduction

The Montana Public Employees' Retirement Board (PERB) is the fiduciary for all public employee retirement systems (except Teachers') and the state's 457 deferred compensation plan. The retirement systems include Public Employees' (PERS), Judges' (JRS), Highway Patrol Officers' (HPORS), Sheriffs' (SRS), Game Wardens' and Peace Officers' (GWPORS), Municipal Police Officers' (MPORS), Firefighters Unified (FURS), and the Volunteer Firefighters' Compensation Act (VFCA).

With the exception of PERS and the 457 plan, all retirement systems listed above are defined benefit plans. PERS has both a defined benefit plan and a defined contribution plan.

PERB trustees have fiduciary duties of care, skill, prudence, caution, diligence, loyalty, and impartiality.

The following Code of Conduct was adopted on December 2009 and expands on requirements in the Montana Constitution and Montana laws. It also delineates specific fiduciary duties of the PERB.

PERB Code of Conduct

1. Act in good faith and in the best interest of the members and beneficiaries of the retirement systems.

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

The overriding objective of the retirement systems is to serve as a secure source of retirement income. PERB trustees have a primary duty to act for the benefit of the systems' members and beneficiaries. PERB trustees comply with this duty by striving to safeguard and grow the assets of the systems to provide maximum benefit to the systems' members and beneficiaries.

In carrying out their responsibilities, PERB trustees may consider the position of stakeholders, for example, creating jobs or stimulating industry in the local area, as long as the interests of the members and beneficiaries remain paramount.

Montana Law Governing Fiduciary Responsibility:

Montana Constitution (1972), Article VIII

Section 15. Public retirement system assets. (1) *Public retirement systems shall be funded on an actuarially sound basis. Public retirement systems 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 members 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 members and their beneficiaries.*

Montana Code Annotated (MCA)

§ 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.*

§ 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.*

§ 19-2-403 Powers and duties of board. . . . (6) *In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.*

§ 19-2-303 Definitions . . . (9) *“Benefit” means:*

(a) *the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or*

(b) *a 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.*

2. Act with prudence and reasonable care.

PERB trustees must exhibit the care and prudence necessary to meet their obligations to the funds’ members and beneficiaries. The exercise of prudence requires acting with appropriate levels of care, skill, and diligence that a person acting in a like capacity and familiar with such matters would use under the same circumstances.

In the context of serving as a trustee, prudence requires:

- Acting in a judicious manner to avoid harming members’ and beneficiaries’ funds;
- Acting in good faith, without improper motive or purpose;
- Exercising authority and discretion consistently;
- Following the investment parameters set forth by the funds’ documents, the Deferred Compensation (457) Plan’s and the Defined Contribution Retirement Plan’s Investment Policy Statements, and applicable regulations; and

- Having adequate knowledge of and skill in balancing risk tolerance and returns, and by seeking appropriate levels of diversification.

Trustees may rely on information and recommendations from staff, external third-party service providers, and professional consultants. In doing so, trustees must make reasonable and diligent effort to ensure that:

- Service providers, and staff act with appropriate skill, competence, and diligence;
- Third-party experts and staff are independent and free of conflicts of interest and have the proper incentives to act in the best interests of the funds' members; and
- The designees' decisions have a reasonable and adequate basis and that the decision process is adequately documented.

Although the delegation of certain trustee responsibilities to experts is a prudent option, the trustees retain the ultimate fiduciary duty and responsibility to monitor the experts. The trustees may not delegate the entire administration of the trust to others.

Montana Code Annotated (MCA)

§ 72-34-113 Duty not to delegate entire administration of trust (1) *The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person or delegate the entire administration of the trust to a cotrustee or other person.*

(2) *In the case in which a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.*

3. Act with skill, competence, and diligence

Skill and diligence require trustees to be knowledgeable about the matters and duties with which they have been entrusted. Ignorance of a situation or an improper course of action on matters for which the trustee is responsible, or should at least be aware, is a violation of this code. Improper or ill-advised decisions can be costly to the pension funds and detrimental to the funds' members and beneficiaries. Prior to taking action on behalf of the funds trustees and their designees must analyze the potential opportunities and risks and act only after undertaking due diligence to ensure they have sufficient knowledge about the matter.

In carrying out their fiduciary duties of skill, competence and diligence, the PERB trustees will:

- Adopt and Monitor Policies
 - ❖ Set the long-term strategic direction and annual business plan for administered funds, focusing on the goals of the funds against which performance is measured and monitored.
 - ❖ Set policies for the funds focusing on:
 - Asset allocation
 - Unfunded liabilities

- Risk-adjusted rates of return
 - Potential future risk
 - Plan Governance
 - Actuarial Assumptions
 - Funding of Benefits
- ❖ Select, regularly evaluate and, if necessary, take disciplinary action against the Executive Director.
- ❖ Delegate execution of established Board policy and strategic objectives to the Executive Director and through the Executive Director re-delegation to the staff and agents of the Board.
- Review and Evaluate Performance
 - ❖ Monitor performance and regularly review results as compared to:
 - Board’s mission statement
 - Strategic plan and other long-range goals
 - Annual business plans
 - Performance measures that include external as well as internal measures
 - ❖ Benchmarking, incorporating measures that, if realized, clearly position administered funds within the top quartile of comparable funds.
 - ❖ Assure plans are in place that provide for management succession.
 - ❖ Annually evaluate the Board and its performance, and take any steps necessary to improve Board operations.
 - ❖ Review, approve, and monitor actuarial data, assumptions and experience.
- Review and Evaluate Financial and Administrative Operations
 - ❖ Review, approve and monitor the annual budget, supplemental budget, financial standards and policies, as well as material transactions that are not in the ordinary course of business.
 - ❖ Review and approve the funds’ investment policies as necessary, but at least annually, to ensure that the policies remain current.
 - ❖ Ensure the integrity of the financial control and reporting systems.
 - ❖ Oversee all audits, including the annual financial audit, the biennial compliance audit, internal control audits, and provide that the financial controls and reporting systems exist.

Trustees must have or acquire knowledge and understanding of trust and pension laws. Trustees should not act—or fail to act—for the beneficiaries if lacking appropriate understanding or knowledge.

- Trustees are expected to obtain any training or educational opportunities necessary to ensure their level of knowledge and understanding about pensions and investments remains current;
- Incumbent trustees and the MPERA staff have a responsibility to ensure that new trustees receive proper training and education to fulfill their duties;
- Trustees must conduct an annual evaluation of individual trustee and board skills; and
- Trustees must develop a plan for improving PERB’s competencies.

4. Maintain independence and objectivity by, among other actions, avoiding conflicts of interest, refraining from self-dealing, and refusing any gift that could reasonably be expected to affect their 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. They must endeavor to avoid actual and potential conflicts of interest between their work with the pension funds and other personal outside interests.

To that end, PERB trustees:

- Strive to avoid even the appearance of impropriety. Outside duties or responsibilities should not influence decisions because the trustee acts primarily for the members and beneficiaries of the retirement funds;
- Refrain from soliciting political/charitable contributions from service providers to the funds, either personally or on behalf of another;
- Do not allow political interests, philosophy, or political party loyalty to influence decisions made on behalf of the funds;
- Do not put themselves in a position where their interests and the interests of the pension funds conflict. Trustees who also are pension fund members or beneficiaries should take precautions to avoid any personal profit at the expense of the funds;
- Do not use the prestige or influence of their position for private gain or advantage;
- Avoid any employment or contractual relationship with, or any interest in, firms that provide services to the pension funds;
- Will refuse to accept, directly or indirectly, any gift, service, favor, entertainment, or benefit (collectively known as “gift”) of substantial value (\$50 or more per individual) from service providers, consultants, potential investment targets, or other business partners; or gifts that could reasonably be assumed or expected to either
affect their independence, objectivity, or loyalty;
influence a decision; or
be considered a reward.

MCA § 2-2-102(3)(a). See *note below for instances where the term “gift” does not apply.

- Will not “*accept a gift of substantial value or a substantial economic benefit tantamount to a gift: (i) that would tend improperly to influence a reasonable person in the person’s position to depart from the faithful and impartial discharge of the person’s public duties; or (ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken*”. MCA § 2-2-104(1)(b)
- Are subject to Montana Criminal Code § 45-7-104(2): *No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.*

* The term “gift of substantial value” does not include:

- (i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;
- (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;
- (iii) educational material directly related to official governmental duties;
- (iv) an award publicly presented in recognition of public service; or
- (v) educational activity that (A) does not place or appear to place the recipient under obligation; (B) clearly serves the public good; and (C) is not lavish or extravagant.

MCA § 2-2-102 (3) (b)

Disclosure and Recusal on Conflicts of Interest

To the extent conflicts may not be avoided, PERB Trustees must recognize and take appropriate measures to deal with and manage the conflict. Thus, trustees:

- Must disclose all real or perceived conflicts of interest. Disclosures are required prior to voting on an issue that directly impacts a group of which the trustee is a member.
- Must not participate in a discussion or vote on an issue in which the trustee has a direct personal or pecuniary interest. Interests that are shared by a group are not "personal interests". The trustee must inform the PERB in a neutral manner of the reason for not participating or voting, and leave the Board meeting during the discussion.

Post-Service Contacts

A PERB Trustee must not:

- Contract or be employed by a service provider who contracts with MPERA within 6 months of termination of Board service.
- Within 12 months following voluntary termination of board service obtain employment of direct advantage, unavailable to others, of matters with which the trustee was involved during board service. MCA § 2-2-105(3)

5. Abide by all applicable laws, rules, and regulations including the terms of the funds documents.

As a general matter, pension funds operate in a complex, varied, and rapidly changing regulatory environment. PERB, having been vested with the power to manage and administer the pension funds, is responsible for ensuring adherence to the terms of the arrangement, statutes, bylaws, contract, trust instrument or other associated governing documents. Generally, trustees are not expected to master the nuances of technical complex law or become experts in compliance with pension regulation but they have authority to retain legal and pension law counsel.

Trustees must regularly ensure that the pension funds have adopted and updated compliance policies and procedures designed to maintain compliance with laws and regulations that govern the pension funds.

- 6. Review on a regular basis the efficiency and effectiveness of the pension funds' goals including assessment of the performance and actions of the Montana Board of Investments; and MPERA's assessment of the pension funds' service providers, including but not limited to investment consultants, recordkeepers, and actuaries.**

PERB Trustees must:

- Assist MPERA staff in monitoring service providers to ensure their performance is consistent with "Request for Proposal" and contract requirements.
- Review, at least annually, the investment consultant's recommendations to ensure consistency with applicable Investment Policy Statements.
- Obtain knowledge and understanding of the Board of Investment's policies and procedures to ensure consistency and compliance with retirement funding goals.

- 7. Maintain confidentiality of pension fund, participant and beneficiary information.**

PERB trustees must hold strictly confidential all information communicated to them in the context of their duty on the Board, and they must take all reasonable measures to preserve this confidentiality. Trustees must ensure that MPERA has in place a policy that addresses how confidential pension system information will be collected, used, stored, and protected and should ensure that this policy extends to external agents and delegates.

- 8. Communicate with members, beneficiaries, and supervisory authorities in a timely, accurate and transparent manner.**

PERB trustees must:

- Publicly disclose relevant policies, procedures and annual reports;
- Ensure that the information they provide to members and beneficiaries is accurate, pertinent, and complete; and
- Not misrepresent any aspect of their services or activities in any communications, including oral representations, electronic communications, or written materials whether publicly disseminated or not.

If the PERB or Montana legislature is considering significant changes, such as mandating a later retirement age, lowering the percentage of future benefits, or closing the system to new members, trustees must communicate this information well in advance to allow affected parties the opportunity to provide input. Communication methods will include, but will not be limited to, the MPERA website.

Among other disclosures, trustees have a duty to present performance information that is a fair representation of the funds' investment record and that includes all relevant factors. Trustees

have a responsibility to comply with the funds' disclosure policies by submitting any requested information in a timely manner. To be effective, disclosures of information must be made in plain language and in a manner designed to effectively communicate the information.

9. Ensure co-fiduciary responsibility and enforcement of code.

A PERB trustee may be liable for a breach of fiduciary duty by another PERB trustee if the trustee:

- Participates knowingly in, or knowingly undertakes to conceal, an act or omission of a co-fiduciary knowing that act or omission is a breach;
- By reason of his or her own failure to comply with applicable fiduciary rules, enables a co-fiduciary to commit a breach; or
- Has knowledge of a breach by a co-fiduciary and fails to make reasonable efforts under the circumstances to remedy the breach.

Failure to comply with the Code of Conduct and/or falsification of the required disclosure forms constitutes grounds for corrective or disciplinary action, such as private counseling by the Board President and Executive Director. Additional action could include, with prior Board approval, public censure or removal from Board committees impacted by the breach.

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