

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

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 2.43.1302, 2.43.1306,)	
2.43.2102, 2.43.2105, 2.43.2109,)	
2.43.2110, 2.43.2114, 2.43.2115,)	
2.43.2120, 2.43.2301, 2.43.2309,)	
2.43.2310, 2.43.2317, 2.43.2319,)	
2.43.2608, 2.43.2609, 2.43.2702,)	
2.43.2703, 2.43.2704, 2.43.2901,)	
2.43.3001, 2.43.3004, 2.43.3005,)	
2.43.3009, 2.43.3402, 2.43.3540,)	
2.43.3545, 2.43.4616, 2.43.4617, and)	
2.43.4807, all pertaining to the)	
operation of the retirement systems)	
and plans administered by the)	
Montana Public Employees')	
Retirement Board)	

TO: All Concerned Persons

1. On July 14, 2011 the Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-455 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1211 of the 2011 Montana Administrative Register, Issue Number 13.

2. The PER Board has amended the following rules as proposed: ARM 2.43.1306, 2.43.2105, 2.43.2109, 2.43.2110, 2.43.2114, 2.43.2115, 2.43.2120, 2.43.2301, 2.43.2309, 2.43.2310, 2.43.2317, 2.43.2319, 2.43.2608, 2.43.2609, 2.43.2702, 2.43.2703, 2.43.2704, 2.43.2901, 2.43.3001, 2.43.3004, 2.43.3005, 2.43.3009, 2.43.3402, 2.43.3540, 2.43.3545, 2.43.4617, 2.43.4807.

3. The PER Board is not amending the following rules: ARM 2.43.1302 and 2.43.2102.

4. The PER Board has amended the following rule as proposed, but with the following change from the original proposal, new matter underlined, deleted matter interlined:

2.43.4616 INTEREST PAID TO PARTICIPANTS (1) A participant's DROP account must include compounded annual interest.

(2) Subject to (3), the interest rate will be fixed at the end of each fiscal year and will equal the actuarially assumed rate of return for the trust fund.

(3) Interest credited on the DROP account shall comply with any applicable provisions of 29 USC section 623(i)(10)(B)(i) of the federal Age Discrimination in

Employment Act (ADEA) and any applicable federal treasury regulations establishing market rates of return for purposes of complying with ADEA.

AUTH: 19-2-403, 19-9-1203, MCA

IMP: 19-2-303(23), 19-9-1206, 19-9-1208, MCA

5. The PER Board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT #1: The definition of "direct rollover" in ARM 2.43.1302 amends or enlarges the statutory definition found in 19-2-303(19), MCA. There are a number of Montana Supreme Court cases holding that rules may not alter statutes. If the board finds it necessary to include a definition of this term in its rules, the definition may not alter the statutory definition.

RESPONSE #1: The board had no intention of adopting a definition of "direct rollover" different than that contained in statute. The statutory definition addresses direct rollovers from board-administered plans to other eligible retirement plans. Direct rollovers can also occur from other eligible retirement plans to board-administered plans. The board will propose a change to the statutory definition in 2013 that addresses both types of direct rollovers.

COMMENT #2: In the amendment to ARM 2.43.2102, the statement of reasonable necessity does not address the reason for the change from 180 days to 30 days.

RESPONSE #2: The board agrees. Statements of reasonable necessity cannot be amended through the comment/response process. The board will re-notice this proposed amendment in the future and address the reason for the proposed change from 180 days to 30 days.

COMMENT #3: There are several rule amendments for which the statute implemented and/or the authorizing statute relied on by the board have not been underlined in accordance with ARM 1.3.309(3)(a)(vi).

RESPONSE #3: The board agrees. The board will underline all implementing and authorizing statutes in the future.

COMMENT #4: The section underlined for ARM 2.43.4616, 19-9-1208, MCA, was amended by Ch. 284 and not Ch. 283, L. 2009.

RESPONSE #4: The board agrees. However, this minor typographical error does not prevent the board from adopting the rule as proposed to be amended.

COMMENT #5: In ARM 2.43.4617, the statute underlined was not amended by Ch. 284, L. 2009. Perhaps the board meant a different section of law.

RESPONSE #5: The board agrees. Section 19-2-303(23), MCA, is the statute being implemented by these amendments and has been added to the list of implementing authorities.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

Certified to the Secretary of State August 15, 2011.