



For  
Members, Retirees  
and  
Employers

**Montana Public Employee Retirement Administration (MPERA)**

**June 2009**

**2009 Legislative Report From the Executive Director**

*by Roxanne Minnehan*

The 61<sup>st</sup> Legislative Session adjourned Tuesday, April 28, 2009. Due to the economic conditions, proposals to enhance the retirement systems either failed or were withdrawn early in the session.

The Public Employees' Retirement Board (Board) proposed three pieces of legislation: HB12 – requiring employer only contributions on working retirees' compensation; HB 109 – general statutory revisions bill; and HB 170 – additional statutory revisions to meet IRS requirements. HB 12 failed; HB 109 and HB 170 passed.

HB 12, sponsored by Rep. Franke Wilmer, addresses the strain of working retirees on the systems' funding status. Working retirees take the place of new hires, resulting in no employee and employer contributions being remitted. Because the number of working retirees is expected to increase, the Board will consider proposing similar legislation next session.

HB 109 and HB 170 revise retirement statutes for clarification, consistency amongst systems and compliance with federal requirements. (See Articles on pages 2 and 3)

Legislation attempting to increase the PERS retirement eligibility age and move all the statewide public employee retirement systems to the current PERS-Defined Contribution Retirement Plan failed. An interim retirement study bill did pass. (See Article on Page 4). Depending upon the result of the interim study, the next legislative session may include proposals to counteract the current market conditions and their impact on the retirement trust funds. It is likely to see proposals moving fully to a defined contribution plan, however, such action will not eliminate the necessity of continued maintenance of the defined benefit plans. Retirement issues are complex and far-reaching. Consideration of a plan design change is a major undertaking and should be thoroughly examined before legislation with unforeseen consequences is proposed.

The Legislature acted responsibly in its consideration of retirement legislation this past session. We look forward to working with the Legislature during the interim and the next session to help provide education on retirement issues, to assist in constructing legislation that will meet federal requirements, and to help provide sustainable, quality retirement benefits for our plan members and their beneficiaries.

Enjoy your summer in Montana. ♦

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*Should any information in this newsletter conflict with statute or rule, the statute or rule will apply.*

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**The MPERA website is <http://mpera.mt.gov/>**

## HOUSE BILL 170 - QUALIFICATION BILL

### THE IMPORTANCE OF TAX-QUALIFIED RETIREMENT SYSTEMS

The Public Employees' (PERS), Judges' (JRS), Game Wardens' and Peace Officers' (GWPORS), Highway Patrol Officers' (HPORS), Municipal Police Officers' (MPORS), and Firefighters' Unified (FURS) Retirement Systems are tax-qualified retirement systems under section 401(a) of the federal Internal Revenue Code. "Tax-qualified" means that your and your employer's contributions into your retirement system are made on a pre-tax basis, and the earnings on those contributions remain tax-deferred until you take a distribution from your retirement account. If a retirement system is found to not be tax-qualified, the contributions and earnings are immediately subject to taxation. It is extremely important that our retirement systems remain tax-qualified.

Recent federal legislation, including the Pension Protection Act of 2006, the Worker, Retiree, and Employer Recovery Act of 2008, the Heroes Earnings Assistance and Relief Tax Act of 2008, and Revenue Rulings issued by the IRS mandate changes to governmental-sponsored tax-qualified retirement systems. House Bill 170, sponsored by Rep. Mike Menahan, addresses the IRS-required changes to Montana statute. It was passed by the Legislature and signed into law by Governor Schweitzer on April 17, 2009. Passage of HB 170 ensures the continued qualified status of the MPERA-administered section 401(a) retirement systems. ♦

### ENSURING YOUR RETIREMENT PLAN REMAINS QUALIFIED

The provisions of House Bill 170, the Montana Public Employees' Retirement Board's (Board) tax-qualification bill (see previous article), will be effective July 1, 2009. HB 170 highlights follow, sorted by interest group:

#### EMPLOYERS/ NEW EMPLOYEES - Election Periods

The Board has been advised by tax counsel that the IRS may not look favorably on multiple elections or lengthy election windows. As a result, employees eligible for optional PERS membership who are hired or take office on or after July 1, 2009, will have **90 days** (previously 180 days) from their hire date to elect whether or not to join PERS. This window applies to:

- Legislators
- State and local elected officials
- Legislative branch employees who work less than 10 months a year
- Any employees who work less than 960 hours (cumulative) a year in PERS-covered positions
- Governor appointees
- Chief administrative officers of any city or county
- Employees of county hospitals or rest homes

PERS members whose employers pass an election to join either MPORS or FURS on or after July 1, 2009 will have **90 days** from the date of the employer's election to elect whether to join MPORS or FURS, or to remain in PERS. MPORS members previously had 30 days, while FURS members previously had 180 days.

PERS members first hired into a FURS position after age 45 will have **90 days** from their hire date to elect to remain in PERS. Firefighters over age 45 previously had 30 days to make their election.

Part-paid firefighters will have **90 days** from their hire date to elect whether to join FURS. Part-paid firefighters previously had 180 days to make their election.

#### MEMBERS - Refund and Death Benefit Rollovers

Members who take a refund of their accumulated contributions may now have their contributions rolled over to any eligible retirement plan, including IRAs, Roth IRAs, IRC 403(a) and (b) tax sheltered annuities, and 457(b) deferred compensation plans. A member's surviving spouse, and a member's spouse or former spouse who is an alternate payee pursuant to a Family Law Order (FLO), have the same distribution options.

## **PERS - Defined Contribution Retirement Plan (DCRP) Family Law Orders**

Family Law Orders (FLOs) are legal instruments that divide a retirement system member's accumulated contributions, death payments, or retirement benefits between the member and a former spouse, pursuant to a divorce decree. Currently, the former spouse can not receive their portion of the member's account until the member terminates employment, retires or dies.

Effective July 1, 2009, former spouses of PERS **DCRP** members will receive their portion of the member's account upon approval of the FLO. Immediate distribution may reduce DCRP administrative fees and provide members with more favorable property settlement options than selling the family home or business. Immediate distribution is already available in the State's 457(b) deferred compensation plan. Immediate distribution is not available in the defined benefit plans.

## **PERS, SRS, GWPORS and JRS RETIREES - Option 2 Retirement Benefit**

Option 2, the 100% joint and survivor annuity, will no longer be available to retiring members wishing to name a non-spouse survivor more than 10 years younger than themselves. The age difference results in an actuarially-valued total payment that exceeds the member's life benefit. Option 3, the 100% joint and 50% survivor annuity, remains available.

## **Pop-Ups Available under Options 2 and 3**

Retiring members who elect either the Option 2 or the Option 3, must name a survivor to receive a continuing monthly retirement following the member's death. If the survivor dies prior to the member, or the survivor is the member's spouse and they divorce, the member can elect to:

- revert to the original Option 1 benefit, plus increases received since retirement;
- retain the Option 2 or Option 3 benefit, but name a new survivor; or
- select a different retirement benefit option and name a new survivor.

The election must be made within 18 months of the survivor's death or dissolution of the marriage.

If the member elects Option 2 or 3, a new retirement benefit will be calculated based on the member's and the new survivor's ages at the time of the election.

## **MPORS - Deferred Retirement Option Plan (DROP)**

Effective July 1, 2009, MPORS members who elected, or elect in the future, to participate in the DROP will receive interest on their DROP account at the MPORS' actuarially-assumed rate of return, currently 8%. The 3% GABA (guaranteed annual benefit adjustment) will continue to accrue after the member has participated in the DROP for one year. ♦

## **HOUSE BILL 315 PENSION AND ANNUITY INCOME - EXCLUSION FROM STATE TAXES**

### **Inflation Adjustment to the Excluded Amount and Income Cap**

**R**epresentatives Anders Blewett and Janna Taylor and Senators John Brueggeman and Jesse Laslovich individually introduced bills to provide state tax relief for retirees. Rep. Blewett's HB 315 prevailed, and was ultimately co-sponsored by the other three legislators. The final version of HB 315 provides inflation adjustments to the \$3600 in benefits currently excluded from state taxes and to the \$30,000 adjusted gross income (AGI) cap, after which the exclusion is reduced \$2 for every \$1 of AGI.

Retirees receiving pensions from the Montana Public Employee Retirement Administration, or any other source, should be aware of this change and ensure their 2009 tax return reflects the correct exclusion. Questions should be directed to their tax preparer or the Montana Department of Revenue. ♦

### HOUSE BILL 109 - GENERAL REVISIONS BILL

Every legislative session, MPERA proposes changes to clarify existing statutes. The 2009 general revision bill, HB 109, sponsored by Rep. Chuck Hunter, will be effective on July 1, 2009. Following are some highlights of this bill.

The employer requirements for reporting contributing members and non-contributing employees were clarified. The clarifications will hopefully alleviate reporting errors that impact members. Another section of the HB 109 allows the electronic submission of monthly working retiree reports.

It is not uncommon for some members to switch retirement systems during their working career. A section of HB 109 clarifies the rights of members of the PERS Defined Contribution Retirement Plan who move to an-

other retirement system and wish to purchase service into the new system.

Many members accept temporary secondary employment. HB 109 provides the option to retain current beneficiary designation when accepting the temporary employment.

Finally, there are members who are unable to continue employment and apply for disability benefits. Once approved for a disability benefit, it is standard to periodically review their medical condition. The statute previously referenced physician house calls for the medical review. As the era of the physician house calls is gone, the statutes were revised, taking out all home visit references. ♦

### HOUSE BILL 659 - RETIREMENT STUDY

HB 659 requires the State Administration and Veterans' Affairs (SAVA) interim committee to examine and recommend to the 62<sup>nd</sup> Legislature funding and benefit changes in all the statewide public employees' and teachers' retirement systems. The bill, sponsored by Rep. Don Roberts, becomes effective July 1, 2009 and provides an appropriation of \$200,000 to hire actuarial and other expert consulting services.

The bill was proposed due to the adverse effects of the economy on the market value of investments of Montana's statewide retirement systems.

The current market has had a devastating impact on retirement plans across the country and the economy as a

whole. SAVA is charged with developing plan design changes as a part of the overall compensation package for public employees and must review, at a minimum: 1) the benefit formulas, 2) the minimum retirement age for full and reduced retirement benefits; and 3) the minimum years of service for both full and early retirement benefits. Please note that under Montana's Constitution, plan design changes are for new members only.

MPERA will assist SAVA by providing input, expertise and perspective throughout the interim in an effort to ensure that public employees continue to receive adequate retirement benefits. ♦

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