

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

In the matter of the adoption of)	NOTICE OF ADOPTION OF
Temporary Emergency Rules that)	TEMPORARY EMERGENCY RULES
establish criteria to be used by the)	
Board's actuary to obtain information)	
related to PERS, its amortization)	
period, its funding status, its future)	
GABA rates, and its actuarial)	
equivalent factors)	

TO: All Concerned Persons

1. The Montana Public Employees' Retirement Board is adopting the following emergency rules because sections 3, 4, 5, 6, and 7, Chapter 390, Laws of 2013, require the Board's actuary to provide important actuarial analyses of the Public Employees' Retirement System as part its actuarial valuation of the system for fiscal year 2013. In addition to the yearly actuarial valuation of the system, the actuary must determine amortization periods and funding level percentages based in part on guaranteed annual benefit adjustment (GABA) rates that, under Chapter 390, Laws of 2013, are fluctuating and uncertain; and on contribution increases which are subject to triggers impacted by those fluctuating and uncertain GABA rates. The FY2013 valuation will commence in July 2013, prior to the time in which the necessary rules could be adopted through the regular rule-making process.

The rules are necessary to provide direction to the actuary regarding assumptions required for determining accurate and helpful valuations, including projections of amortization periods and funding level percentages. The rules will also assist the actuary in establishing yearly GABA rates and providing actuarial equivalent factors to be used for calculating money purchase retirement benefits, early retirement reductions, optional benefits, and the cost of various service purchases.

2. The Montana Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of [Department Name] no later than [Time]:00 [a.m./p.m.] on [Month Day, 20##], to advise us of the nature of the accommodation that you need. Please contact [Contact Name], Department of [Department Name], [Address], [City], Montana, [Zip Code]; telephone (406) 444-####; fax (406) 444-####; [TDD/Montana Relay Service/etc. (406) 444-]; or e-mail [contact]@mt.gov.

3. The temporary emergency rules will be effective July 1, 2013.

Montana Administrative Register [new MAR Notice # 2-43-478
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4. The text of the temporary emergency rules provides as follows:

RULE I [2.43.1307] APPLICATION OF ACTUARIAL ASSUMPTIONS FOR TESTING PURPOSES (1) For purposes of determining the PERS funding level percentage referenced in 19-3-1605(5)(a), MCA (2013), the actuary will:

- (a) assume a GABA percentage rate of 1.5% for future years;
- (b) assume the actuarial value of assets; and
- (c) set the funding percentage rounded to the nearest whole number.

(2) For purposes of determining the amortization period referenced in 19-3-1605(5)(b), MCA (2013), the actuary will:

- (a) assume a GABA percentage rate of 1.5% for future years; and
- (b) assume the actuarial value of assets;

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

REASON: The rule is necessary to provide direction to the actuary regarding assumptions required for implementing Chapter 390, Laws of 2013. The actuary must determine the PERS funding percentage and the amortization period in order to set a GABA rate. However, the assumptions used to determine both the funding percentage and the amortization period include an established GABA rate. Actuarial valuations based on assumptions that change based on other assumptions are not as reliable as valuations based on established assumptions. Thus an initial GABA rate is necessary to start the calculations.

The current 3% GABA is significantly higher than future GABAs and would result in a significantly greater unfunded liability and longer amortization period than actually exists under a reduced GABA. Chapter 390, Laws of 2013 establishes a GABA with a 0% floor and a 1.5% ceiling, together with contribution and funding triggers designed to amend the GABA in increments of one tenth of one percent. The Board has established the assumption of 1.5% for the testing GABA rate because, as the highest possible GABA under Chapter 390, Laws of 2013, it will result in the largest possible reasonable liability, thus assuring the legislative goal of bringing the system to a position of actuarially sound funding.

The Board has determined to use the actuarial value of assets rather than the market value of assets as the actuarial value of assets is the industry-accepted standard and is currently relied on when conducting annual actuarial valuations for all retirement systems administered by MPERA.

The Board has determined to set the funding percentage as a whole number to facilitate its decision in Rule II below to only reduce the GABA for each full 2% the funding percentage is below 90%.

RULE II [2.43.1309] APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING GABA (1) For purposes of determining the PERS GABA rates referenced in 19-3-1605(5), MCA (2013), the actuary will:

(a) reduce the 1.5% GABA rate established in 19-3-1605(4), MCA (2013) by 0.1% for each full 2 percentage points the funded percentage is below 90%;

(b) establish a GABA rate expressed in tenths of a percent.

(2) This rule will not apply until the PERS amortization period is under 40 years.

(3) Once the PERS amortization period is under 40 years, the actuary will adjust the 1.5% GABA each year, based on that year's PERS funding percentage.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

REASON: The rule is necessary to provide direction to the actuary regarding assumptions required for determining the GABA rate to be applied to PERS retiree benefits on an annual basis.

The actuary questioned whether GABA should be reduced proportionately. For example, if the funded percentage is 79%, should the GABA be reduced from 1.5% to .95% ($90\% - 79\%/2 = .55\%$; $1.5\% - .55\% = .95\%$)? The Board determined that reductions in one tenth of one percent would be sufficient to meet the legislative goal of bringing the system to a position of actuarially sound funding while maintaining the ability to explain the GABA reductions to members and without causing undue administrative hardship. Thus, in the above example, the GABA rate would be reduced from 1.5% to 1% ($90\% - 80\%/2 = .5\%$; $1.5\% - .50\% = 1.0\%$).

Subsections (2) and (3) are necessary to specify how the GABA rate will be calculated each year after the amortization period is below 40 years. Members and stakeholders have questioned whether the legislation provides a mechanism for changing the GABA each year. The Board believes the legislation was intended to allow the GABA to be recalculated and reset each year in a manner consistent with 19-3-1605(5), MCA (2013).

RULE III [2.43.1311] APPLICATION OF ACTUARIAL ASSUMPTIONS AND PROCESS FOR DETERMINING ACTUARIAL EQUIVALENT FACTORS

(1) For purposes of determining actuarial equivalent factors for optional benefit determinations, early retirement factors, money purchase benefit calculations, and service purchases, the actuary will:

(a) assume a 1.5% GABA rate for future years; and

(b) establish new actuarial equivalent factors effective January 1, 2014 following the fiscal year 2013 actuarial valuation.

(2) The 1.5% GABA rate established in subsection (1)(a) above is prospective only. Optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases implemented prior to July 1, 2013, will not be affected.

(3) Prior to January 1, 2014, MPERA will work with members regarding the options available to them regarding optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases.

Montana Administrative Register [new MAR Notice # 2-43-478

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(4) In the event of a court order prohibiting the Board from implementing a 1.5% GABA rate pursuant to 19-3-1605, MCA, the actuary will continue assuming a 3% GABA rate until the court order is amended or lifted.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

REASON: The rule is necessary to provide direction to the actuary regarding assumptions required for determining actuarial equivalent factors used for calculating various actuarially-equivalent benefits and the cost of various service purchases. The GABA rate is an important assumption in these calculations.

Chapter 390, Laws of 2013 establishes a GABA with a 0% floor and a 1.5% ceiling, together with contribution and funding triggers designed to amend the GABA in increments of one tenth of one percent. Actuarial valuations based on assumptions that change based on other assumptions are not as reliable as valuations based on established assumptions. The Board has determined to use the ceiling of 1.5% because it will result in the largest possible liability, and the highest service purchase cost, thus assuring the legislative goal of bringing the system to a position of actuarially sound funding.

Subsections (2) and (3) are necessary as the Board has been contacted by members concerned that their prior service purchases were based on assumptions that are no longer true.

Subsection (4) is necessary as the Board has been advised that a lawsuit challenging the constitutionality of a decreased GABA rate is pending and that the plaintiffs would be seeking an injunction to prevent implementation of the new GABA rate pending resolution of the lawsuit.

RULE IV [2.43.1313] APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING THE AMOUNT OF COAL SEVERANCE TAX AND INTEREST INCOME STATUTORIALLY APPROPRIATED TO THE PERS DEFINED BENEFIT PLAN TRUST FUND

(1) For purposes of determining the annual amount of coal severance tax and interest income from the coal severance tax permanent fund that will be statutorily appropriated to the PERS defined benefit plan trust fund, the actuary will rely on reports provided to the Board by the Office of Budget and Program Planning.

(2) The report provided to the Board pursuant to subsection (1) above will be available on the Board's website on or before July 31 of each applicable year.

AUTH: 19-2-403, MCA

IMP: 19-2-405, MCA

REASON: Sections 1 and 2, Chapter 390, Laws of 2013 provide for payment of an unknown amount of coal severance tax funds and a maximum amount of interest income from the coal severance tax permanent tax fund. The exact amount of those

statutory appropriations must be provided to the Board so that its actuary can include those amounts in the annual PERS actuarial valuation. The Office of Budget and Program Planning has indicated that it will provide this information to the Board as needed.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule.

6. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to [Contact Name] at the address above.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in [##] above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ [type name of reviewer]
Melanie A Symons
Rule Reviewer

/s/ [type name of director]
Scott Moore
President
Public Employees' Retirement Board

Certified to the Secretary of State either June 10, 2013 or July 1, 2013.

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

In the matter of the adoption of a) NOTICE OF ADOPTION OF
Temporary Emergency Rule and the) TEMPORARY EMERGENCY RULE
temporary emergency amendment of)
an existing rule regarding increased)
PERS employer contributions paid on)
behalf of University employees who)
elect to participate in the Optional)
Retirement Program rather than in)
the Public Employees' Retirement)
System)

TO: All Concerned Persons

1. The Montana Public Employees' Retirement Board is adopting the following emergency rule because Chapter 390, Laws of 2013, does not indicate where the additional PERS employer contributions provided for in section 4 of Chapter 390, Laws of 2013 and paid to University employees who elect to participate in the University Systems' Option Retirement Program are to be allocated. The additional employer contributions commence July 1, 2013, prior to the time in which the necessary rule could be adopted through the regular rule-making process.

2. The Montana Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of [Department Name] no later than [Time]:00 [a.m./p.m.] on [Month Day, 20##], to advise us of the nature of the accommodation that you need. Please contact [Contact Name], Department of [Department Name], [Address], [City], Montana, [Zip Code]; telephone (406) 444-[#####]; fax (406) 444-[#####]; [TDD/Montana Relay Service/etc. (406) 444-]; or e-mail [contact]@mt.gov.

3. The temporary emergency rule will be effective July 1, 2013.

4. The text of the temporary emergency rule provides as follows:

RULE I [2.43.3528] ALLOCATION OF ADDITIONAL EMPLOYER CONTRIBUTIONS ON BEHALF OF MONTANA UNIVERSITY SYSTEM EMPLOYEES IN THE OPTIONAL RETIREMENT PROGRAM

(1) The additional employer contributions provided for in 19-3-316(3), MCA that are paid on behalf of MUS employees in the optional retirement program will be allocated as follows:

(a) The 1.00% additional employer contribution will be directed to the PERS defined benefit plan trust fund.

(b) The .27% additional employer contribution is already allocated to the PERS defined benefit retirement plan's plan choice rate pursuant to 19-21-214(2)(b), MCA.

(c) The 0.1% additional employer contribution that commences July 1, 2014, will be directed to the PERS defined benefit plan trust fund unless the Board determines pursuant to 19-3-2121, MCA that an increase in the plan choice rate is required to actuarially fund the PERS defined contribution retirement plan's share of the PERS defined benefit's plan's unfunded liability. In that event, the 0.1% additional employer contribution will be directed to the PERS defined benefit retirement plan's plan choice rate.

AUTH: 19-2-403, 19-3-2104, MCA

IMP: 19-3-2104, MCA

REASON: Section 6, Chapter 390, Laws of 2013 amends 19-3-2117, MCA to allocate the additional employer contributions paid on behalf of PERS defined contribution retirement plan members. Unfortunately, there is no allocation for MUS employees in PERS covered positions who elect to participate in the Optional Retirement Program (ORP) rather than either the PERS defined benefit retirement program or the PERS defined contribution retirement program. Section 19-21-214, MCA instructs the Board regarding payment of employer contributions to the ORP. That statute is silent regarding the additional employer contributions provided for in Section 4, Chapter 390, Laws of 2013. However, section 19-21-214(3), MCA provides that employer contribution allocations are subject to adjustment by the Board provided the adjustments are consistent with section 19-3-2121, MCA.

Section 19-3-2121, MCA allows the Board to use employer contributions to increase the plan choice rate contribution under certain circumstances. If those circumstances are met, the Board has determined it to be appropriate to allocate the 0.1% increase to the plan choice rate. If the circumstances are not met, the 0.1% increase will go to help reduce the defined benefit retirement plan's unfunded liability.

The Board will ask the 2015 legislature to amend section 19-21-214, MCA to address the allocation of the additional employer contributions on behalf of MUS employees in PERS covered positions who elect to participate in the ORP. The Board will propose to the 2015 legislature that the allocation mirror that in section 19-3-2117, MCA for DC members.

5. The text of the temporary emergency amendment of an existing rule provides as follows:

2.43.2114 REQUIRED EMPLOYER REPORTS (1) All reporting agencies shall file required employer reports, other than working retiree reports required by ARM 2.43.2608 and optional member election applications required by ARM 2.43.2102, no later than five working days after each regularly occurring payday.

(a) Each report must be accompanied by statutorily required employer and employee contributions to the retirement system. The required contribution rate is the rate in effect at the time the employees are paid, and not the contribution rate in effect when the compensation was earned.

(b) Beginning July 1, 2003, reporting agencies shall use MPERA's online web-based employer reporting system and shall remit payment via automated clearing house (ACH).

(c) If the reporting agency does not have access to the internet, the employer reports may be either hard-copy or electronic, but must be in the format provided by MPERA, and must be accompanied by the payment of applicable contributions.

(2) The report must be in alphabetical order by last name and contain for each employee, regardless whether the employee is a member of a MPERA administered retirement system or not:

(a) social security number;

(b) last and first name;

(c) salary;

(d) regular contributions, if any;

(e) service purchase contributions, if any;

(f) the actual hours for which the employee received compensation; and

(g) each employee who terminated during the pay period being reported.

(3) In addition to the information contained in (2), employers must also provide the home addresses of employees who are members of an MPERA administered retirement system. Home addresses of nonmembers are not required.

(4) Reports filed by PERS employers must also include any state or local elected official.

(5) Reporting agencies of the Montana university system (MUS) shall report employees in PERS covered positions who elect the MUS optional retirement program (ORP). The MUS ORP report must include all information required in (2). At the same time, reporting agencies of the MUS shall transmit amounts equal to the statutorily required plan choice rate and the education fund rate for those employees.

(a) Commencing July 1, 2013, MUS shall transmit to MPERA the 1.0% additional employer contribution provided for in Chapter 390, Laws of 2013.

(b) Commencing July 1, 2014, MUS shall also transmit to MPERA the 0.1% additional employer contribution provided for in Chapter 390, Laws of 2013.

AUTH: 19-2-403, MCA

IMP: Section 1, Chapter 239, Laws of 2013, 19-2-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2117, 19-7-1101, MCA;

REASON: Section 19-21-214, MCA allocates the current .27% additional employer contribution to the PERS defined benefit plan to eliminate MPERA. However, Chapter 390, Laws of 2013 does not address the allocation of the additional employer contributions paid by MUS on behalf of employees in covered PERS positions who elect to participate in the ORP. Therefore, this amendment is necessary to ensure that MUS transmits the new additional employer contributions to MPERA for proper accounting.

6. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to [Contact Name] at the address above.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in [##] above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ [type name of reviewer]
Melanie A Symons
Rule Reviewer

/s/ [type name of director]
Scott Moore
President
Public Employees' Retirement Board

Certified to the Secretary of State either June 10, 2013 or July 1, 2013.