**LEGISLATIVE FINANCE COMMITTEE**
**63rd Montana Legislature**
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June 12, 2013

Public Employee's Retirement Board
100 N. Park, Suite 200
P.O. Box 200131
Helena, MT 59620-0131

Dear President Moore and Members of the Public Employees' Retirement Board,

In testimony before the Legislative Finance Committee (LFC) on June 11, 2013, Ms. Melanie Symons of the Montana Public Employees Retirement Administration (MPERA) explained in detail the temporary emergency rules the Public Employees' Retirement Board has adopted for the upcoming implementation of HB 454. Based upon the content of this presentation, the LFC expresses serious reservation with the Board's interpretation of the legislative intent of the provisions in HB 454 and requests that the Board repeal or withdraw its rule (MAR Notice No. 2-43-478) to provide direction to the actuary regarding assumptions required for its actuarial valuation of the Public Employees' Retirement System (PERS) as of June 30, 2013.

First, the LFC does not believe that the temporary emergency rules contained in MAR 2-43-478 address "an imminent peril to the public health, safety, or welfare". Nevertheless, section 2-4-303(1)(a), MCA, requires an agency to make a finding of "an imminent peril to the public health, safety, or welfare" when it adopts "a rule upon fewer than 30 days' notice". Section 2-4-303(1)(a), MCA, provides further that "[b]ecause the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse." In the adoption notice MPERA states: "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." MAR 2-43-478, p. 1, ¶ 2 (emphasis added). It is the position of the committee that providing direction to the actuary is not a topic that addresses "an imminent peril to the public health, safety, or welfare".

Second, the LFC believes that the 63rd Legislature's intent and understanding when it enacted HB 454 was that the actuarial valuation for PERS as of June 30, 2013, would be based on the laws in effect on that date. The Legislature enacted HB 454 specifically to address the fact that based on the June 30, 2012, actuarial valuation, PERS' unfunded liabilities did not amortize and that the actuarial assumptions would not change until **after** HB 454 became effective on July 1, 2013. Thus, the Legislature did not expect that the reduction in the Guaranteed Annual Benefit

Adjustment or the provisions that terminate the contribution increases contained in HB 454 would be implemented in a circular manner by having the actuary assume that HB 454 was in effect for the purposes of the June 30, 2013, actuarial valuation.

For these two reasons, the LFC requests that the Board: (1) repeal its temporary emergency rules providing instructions to its actuary concerning the actuarial assumptions to be used for implementation of HB 454; (2) instruct the PERS actuary to conduct its actuarial valuation as of June 30, 2013, based only on the laws in effect on June 30, 2013; and (3) inform the LFC and the State Administration and Veterans' Affairs Interim Committee of the Board's final decision and actions with respect to these rules, any instructions to its actuary, and the reasons for the Board's decision.

Sincerely,

Sen. Llew Jones, Presiding Officer
Legislative Finance Committee

Rep. Galen Hollenbaugh, Vice-Presiding Officer
Legislative Finance Committee

cc
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Sheri Scurr