

**Public Employees' Retirement Board
December 11, 2014**

Topic: Investment of DCRP Long-Term Disability Plan funds

Discussion: Tax counsel has suggested two options for amending the DC plan to allow investment of the DCRP Long-Term Disability Plan funds into a commingled trust or group trust fund. Both options require an amendment to statute. The first option requires a rule amendment while the second requires a new trust document. Staff recommends that the Board amend ARM 2.43.3505 as proposed in order to allow the Board of Investments to invest DCRP long-term disability trust funds into a commingled or group trust. The rule amendment option would be less expensive and take less time than creating a new trust document.

Staff Recommendation:

Approve proposed amendment to ARM 2.43.3505 for submission to the Secretary of State, with the understanding that revisions may still be proposed by either tax counsel or the Secretary of State.

Board Motion:

Uphold Staff Recommendation

Other.

Moved by

Seconded by

Vote

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 2.43.3505 pertaining to) AMENDMENT
establishment of long-term disability)
trust fund) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On February 27, 2015 the Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The 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 Public Employee Retirement Administration no later than 5:00 p.m. on January 16, 2015, to advise us of the nature of the accommodation that you need. Please contact Kris Vlastic, Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service (406) 444-1421; or e-mail kvlastic@mt.gov.

3. The rule as proposed to be adopted provides as follows:

2.43.3505 ESTABLISHMENT OF LONG-TERM DISABILITY TRUST FUND

(1) The board shall establish a long-term disability trust fund to be used exclusively for the payment of disability benefits to participants of the Defined Contribution Retirement Plan (DCRP).

(2) The long-term disability trust fund is a governmental plan under Internal Revenue Code section 401(a)(24) and may be invested in one or more group trust funds as determined by the Montana Board of Investments.

(a) The group trust fund or funds may be a group trust fund presently in existence or later established as permitted under IRC section 401(a)(24), IRS Revenue Ruling 81-100, IRS Revenue Ruling 2004-67, IRS Revenue Ruling 2011-1 and IRS Revenue Ruling 2014-24.

(b) The group trust fund or funds must be operated and maintained exclusively for the commingling and collective investment of monies pursuant to applicable IRS guidance and must be adopted as a part of the long-term disability trust fund.

(c) No part of the corpus or income of the long-term disability trust fund may be used for, or diverted to, any purpose other than the exclusive benefit of the disabled DCRP participants and their beneficiaries. This exclusive benefit provision is irrevocable.

~~(2)~~ (3) The long-term disability trust fund must be separate and distinct from the Defined Benefit Plan Trust Fund and the DCRP.

~~(3)~~ (4) The long-term disability trust fund must be funded by the statutorily determined percentage of the employers' contributions made for employees who are active DCRP participants.

~~(4)~~ Funds (5) In addition to the requirements of subsection (2), funds in the long-term disability trust fund will be invested pursuant to Article VIII, section 13, of the Constitution and Title 17, chapter 6, part 2, MCA. No funds will be invested in equities.

AUTH: 19-3-2104, 19-3-2141, MCA

IMP: 19-3-2117, 19-3-2141, MCA

REASON: The Public Employees' Retirement System's Defined Contribution Retirement Plan includes a long-term disability plan that has been determined to be an "Other Post-Employment Benefit" (OPEB). OPEB's are subject to the same actuarial funding requirements as the other trust fund's administered by MPERA. In an effort to improve the long-term disability trust fund's funding status, the Montana Board of Investments has adopted an Investment Policy Statement permitting investment of the long-term disability trust fund in certain BlackRock collective investment funds. In order for the long-term disability trust fund assets to be invested in collective, or group investment funds, the terms of the defined contribution retirement plan must be amended as proposed.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., January 23, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., January 23, 2015

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be [##] persons based on [reason for ##].

7. The Public Employees' Retirement Board 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 5. above or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

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

/s/ Scott Moore
Scott Moore
President
Public Employees' Retirement Board

Certified to the Secretary of State December 15, 2014.

MEMORANDUM

TO: Melanie Symons (Montana Public Employee Retirement Administration)
FROM: Mary Beth Braitman and Tiffany A. Sharpley (Ice Miller LLP)
DATE: December 4, 2014
RE: DC Long-Term Disability Trust Fund Participation In A Group Trust

This is in response to your November 24, 2014 e-mail regarding investment in certain BlackRock collective investment funds that the Board of Investments wishes to use for assets of the DC Disability Trust Fund.

As a threshold point, we believe these collective funds are in group trust(s) that BlackRock created. We also understand this is directed solely to the DC Long-Term Disability Fund.

I.
RELEVANT PROVISIONS

It appears there are two relevant governing provisions:

- Section 19-3-2141(7) provides that the board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be "entirely separate and distinct from the defined benefit plan trust fund."
- Montana Administrative Rule 2.43.3505 provides as follows:

"ESTABLISHMENT OF LONG-TERM DISABILITY TRUST FUND

(1) The board shall establish a Long-Term Disability Trust Fund to be used exclusively for the payment of disability benefits to participants of the Defined Contribution Retirement Plan (DCRP).

(2) The Long-Term Disability Trust Fund must be separate and distinct from the Defined Benefit Plan Trust Fund and the DCRP.

(3) The Long-Term Disability Trust Fund must be funded by the statutorily determined percentage of the employers' contributions made for employees who are active DCRP participants.

(4) Funds in the Long-Term Disability Trust Fund will be invested pursuant to Article VIII, section 13, of the Constitution and Title 17, chapter 6, part 2, MCA. No funds will be invested in equities."

- **Note:** Title 17, chapter 6, part 2 MCA provides that the Board of Investments has certain responsibilities with respect to trust fund investments. See 17-6-230 MCA.

II. **RELEVANT PROPOSED TRUST LANGUAGE**

The relevant trust language that would need to be added is as follows:

"The defined contribution retirement plan's long-term disability trust fund, a governmental plan under IRC Section 401(a)(24), may be invested in one or more group trust funds as determined by the Montana Board of Investments. Such a group trust fund can be a group trust fund presently in existence or hereinafter established as permitted under Internal Revenue Code Section 401(a)(24), IRS Revenue Ruling 81-100, IRS Revenue Ruling 2004-67, IRS Revenue Ruling 2011-1, and IRS Revenue Ruling 2014-24. Such a group trust fund must be operated and maintained exclusively for the commingling and collective investment of monies pursuant to the applicable Internal Revenue Service guidance. In such a case, the relevant group trust is adopted as a part of the long-term disability trust fund. It must be impossible for any part of the corpus or income of the long-term disability trust fund to be used for, or diverted to, purpose other than the exclusive benefit of the plan participants and their beneficiaries. This exclusive benefit provision is irrevocable."

III. **DISCUSSION**

We think that BlackRock is correct that the relevant trust would have to be amended to include certain language. The appropriate language to be added is described in the preceding section. It appears to us that the relevant language could be added in one of two places (i.e., Administrative Rule 2.43.3505 or a new trust document).

The most logical place seems to be Administrative Rule 2.43.3505. In addition, the general language in 19-2-504(3) of the compliance bill (with your changes and the following additional changes from us) would also need to be enacted to reflect the authority:

"(3) The pension trust funds, and the defined contribution retirement plan's long-term disability trust fund provided for in 19-3-2141, may be commingled for investment purposes, to the extent permitted by Montana law, and as permitted under I.R.S. Revenue Ruling 81-100, Rev. Rul. 2004-67, I.R.S. Revenue Ruling 2011-1, and I.R.S. Revenue Ruling 2014-24.

Ms. Melanie Symons

December 4, 2014

Page 3 of 3

Another alternative would be to establish a new separate trust document for the long-term disability trust fund (it does not seem that could be the DC Plan Trust Agreement, because of the above administrative rule and the defined contribution nature of the DC Plan trust). The individual trust language in Section II could be added to the new trust, and the legislation would still be needed to create the appropriate authority.

Let us know what your thoughts are on the options. We also reviewed the CAFR to determine what would be consistent with the CAFR treatment, and this would seem to be. You may want to check on this.

We are sorry this took longer than we expected, but the separate status of this long-term disability trust fund (from the DCRP fund) prevented us from using some of the simpler routes we first considered. We look forward to your questions and comments.

/mlf