

Public Employees' Retirement Board

October 8, 2015

Topic: Notice of Proposed Adoption of HPORS DROP Administrative Rules

SB 238 of the 2015 Legislature implemented a Deferred Retirement Option Plan (DROP) in the Highway Patrol Officers' Retirement System (HPORS). The HPORS DROP is similar to the DROP implemented in the Municipal Police Officer's Retirement System in 2001. In order to simplify administration of the two DROPs, the HPORS DROP administrative rules mirror the MPORS DROP administrative rules where possible.

Staff Recommendation:

Staff recommends the Board approve the proposed rule adoption notice and instruct staff to submit the notice to the Secretary of State's office as a "Notice of Proposed Adoption."

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 adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through XI, pertaining to a) PROPOSED ADOPTION
Deferred Retirement Option Plan)
(DROP) for members of the Highway)
Patrol Officers' Retirement System)

TO: All Concerned Persons

1. On November 18, 2015, at 2:00 p.m., the Public Employees' Retirement Board will hold a public hearing in Room 201, 100 N. Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

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 the Public Employee Retirement Administration no later than 5:00 p.m. on November 11, 2015, to advise us of the nature of the accommodation that you need. Please contact Kris Vladoic, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone 406-444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladoic@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS (1) "DROP" means the deferred retirement option plan.

(2) "DROP account" means the amount of money that has accrued to a DROP participant and includes the monthly DROP accrual, times the applicable number of months of participation, and interest.

(3) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated and retired, plus the participant's member contributions for the month at the percentage provided in 19-6-402, MCA.

AUTH: 19-2-403, 19-6-1003, MCA

IMP: 19-6-1005, MCA

NEW RULE II DROP APPLICATION PROCESS (1) Eligible members who wish to participate in the DROP must file a DROP information request with MPERA.

(2) The information request must include the member's:

- (a) full name;
- (b) social security number;
- (c) mailing address;
- (d) date of birth; and

(e) anticipated DROP period start date.

(3) MPERA will calculate estimates of the monthly benefit that would have been payable to the participant had the participant terminated employment and retired at the commencement of the DROP period. The estimate and a DROP application will be sent to the member.

(4) An eligible member who wishes to participate must complete the DROP application and return it to MPERA. MPERA must receive the completed application at least two weeks before the first day of the month the member wants the DROP period to be effective; otherwise MPERA will notify the member that the DROP period will be effective the following month. If a birth certificate or other acceptable proof of age is required by the application, it must accompany the application for the application to be complete.

(5) Once the application is filed with MPERA, the election to participate in the DROP is irrevocable.

AUTH: 19-2-403, 19-6-1003, MCA

IMP: 19-6-1003, 19-6-1004, MCA

NEW RULE III DROP PERIOD (1) The DROP period must begin on the first day of a month, must be prospective, and must end on the last day of a month. The DROP period will end as specified on the application, upon termination, or upon the participant's death, whichever occurs first.

(2) If the participant terminates or dies during the DROP period, the DROP period will end on the last day of the last full month of active service.

(3) A participant may not receive a retirement benefit or the monthly benefit portion of the DROP accrual for the month in which they terminate or die.

AUTH: 12-2-403, 19-6-1003, MCA

IMP: 19-6-1003, 19-6-1004, 19-6-1006, MCA

NEW RULE IV DROP PARTICIPATION LIMITS (1) A DROP participant:

(a) is not eligible for disability retirement;

(b) may not purchase service;

(c) may not receive membership or service credit, except as provided in NEW RULE X; and

(d) may not receive a refund of their HPORS account balance.

AUTH: 19-2-403, 19-6-1003, MCA

IMP: 19-6-1003, 19-6-1004, 19-6-1005, MCA

NEW RULE V ESTIMATED MONTHLY DROP ACCRUAL (1) Once a participant files an application to participate in the DROP and the member's DROP period begins, the participant may be paid estimated monthly DROP accruals.

(2) The employer shall provide all documents MPERA needs to determine the participant's total service credit and highest average compensation. Once the documents are received, the MPERA will finalize the monthly benefit portion of the participant's monthly DROP accrual.

MAR Notice No. 2-43-535

(3) MPERA will suspend the estimated monthly benefit portion of the participant's monthly DROP accrual after three months if the employer has not provided the above documents.

(a) The monthly benefit portion of the participant's monthly DROP accrual will not resume until after the documents are received from the employer and the monthly benefit has been approved.

(b) Retroactive payments of the monthly benefit will be made to the member's DROP account, if necessary.

AUTH: 19-2-403, 19-6-1003, MCA

IMP: 19-6-1003, 19-6-1005

NEW RULE VI 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 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, 19-6-1003, MCA

IMP: 19-6-1003, 19-6-1005, MCA

NEW RULE VII DISTRIBUTION OF DROP BENEFIT (1) The DROP benefit will be distributed upon the participant's termination of employment. The participant may request to receive the DROP benefit in a lump sum, or in a direct rollover to another eligible plan, as allowed by the Internal Revenue Service (IRS).

(2) To make a direct rollover of the DROP benefit, the participant must make arrangements with the other plan and provide any necessary information to MPERA.

(3) A participant must designate a distribution method within 60 days after termination of employment; otherwise MPERA will pay the DROP benefit to the participant in a lump sum. Any required federal or state withholding will reduce the amount of the payment.

(4) MPERA will distribute the DROP benefit as soon as administratively feasible once all appropriate documents are filed with MPERA.

(5) Upon a DROP participant's death, the participant's DROP benefit will be paid to the participant's survivors or, if no survivors exist, then to the participant's designated beneficiaries. The DROP benefit will be paid in a lump sum, unless the recipient chooses to receive the DROP benefit in a direct rollover to another eligible retirement plan, as allowed by the IRS.

AUTH: 19-2-403, 19-6-1003, MCA

IMP: 19-6-1003, 19-6-1006, 19-6-1008, MCA

NEW RULE VIII DISTRIBUTION OF DROP BENEFIT PURSUANT TO FAMILY LAW ORDER (1) A family law order (FLO) may distribute all or a portion of

a DROP participant's DROP benefit to an alternate payee. To do so, the FLO must specifically reference distribution of a DROP benefit and provide a specific method for determining the amount of the DROP benefit to be paid to the alternate payee.

(2) The alternate payee named in the FLO is entitled to the same distribution options available to the participant and as allowed by the IRS.

(3) A FLO may distribute all or a portion of a DROP participant's DROP benefit even if the participant joined the DROP subsequent to approval of the FLO.

(4) A FLO that does not specifically address a DROP benefit will not be considered to distribute any portion of the payee's DROP benefit to an alternate payee.

(5) A FLO cannot specifically require or forbid that the payee participate in the DROP.

(6) To distribute any portion of a participant's DROP benefit, a FLO approved prior to the effective date of the DROP legislation (October 1, 2015) must be amended to specifically address the DROP benefit.

(7) A DROP benefit cannot be distributed pursuant to a FLO until the DROP participant terminates employment.

AUTH: 19-2-403, 19-6-1003, MCA

IMP: 19-6-1003, MCA

NEW RULE IX EMPLOYMENT AFTER THE DROP PERIOD (1) Unless the participant's DROP period is extended pursuant to NEW RULE X, monthly DROP accruals will stop at the end of the designated DROP period even if the participant continues HPORS-covered employment.

(2) The participant's monthly service retirement benefit payments will begin the month following the month in which the participant terminates post-DROP employment.

(3) The participant's DROP benefit will be distributed pursuant to NEW RULE VII.

AUTH: 19-2-403, 19-6-1003, MCA

IMP: 19-6-1003, 19-6-1007, MCA

NEW RULE X IMPACT OF UNIFORMED SERVICE DURING DROP PERIOD

(1) HPORS DROP participants called to duty for a period or periods of service in the uniformed services during their DROP period must, within ninety (90) days from the date they return to employment, make an irrevocable election to either:

(a) include in their original DROP period, pursuant to ARM 2.43.2315, the time in which they were called to duty; or

(b) add this time to the end of their original DROP period.

(2) The time that can be either included in or added to a participant's DROP period under (1) is the total number of whole months during which the participant served in uniformed services during the DROP period. However, the total number of months in the new DROP period may not exceed the total number of months in the DROP period originally elected by the participant under 19-6-1004, MCA.

(3) If the participant elects to include the period of uniformed services in the participant's original DROP period:

(a) the participant's member contributions must be based on the compensation the participant would have received had the participant not been called to uniformed services duty, including any pay raises; and

(b) once the member and employer contributions are paid to MPERA pursuant to ARM 2.43.2315, the applicable member contributions and the participant's monthly retirement benefit for each month of included USERRA service will be added to the participant's DROP account.

(4) If the participant elects to add the period of uniformed services to the participant's original DROP period:

(a) the participant's member contributions to the participant's DROP account will be determined based on the compensation earned during the added months; and

(b) the participant's monthly retirement benefit will be paid to the participant's DROP account during the added months.

AUTH: 19-2-403, 19-6-1003, MCA

IMP: 19-6-1004, MCA

NEW RULE XI DIFFERENTIAL PAY FOR MILITARY LEAVE (1) For purposes of (2) and (3) below, differential pay is pay by an employer to a member who leaves HPORS covered employment to serve in the uniformed services, and the pay is for all or some of the difference between the member's normal salary and military pay.

(2) During the DROP period, employer contributions under 19-6-404, MCA, for all differential pay must continue to be made to the retirement system.

(3) Member contributions under 19-6-402, MCA, for differential pay must be made to the member's DROP account.

AUTH: 19-2-403, 19-6-1003, MCA,

IMP: 19-6-1005, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed new rules are necessary to implement a Deferred Retirement Option Program (DROP) for the Highway Patrol Officers' Retirement System (HPORS) as provided by Chapter 258, Laws of 2015. The rules are also necessary to ensure the DROP will be administered in compliance with the Internal Revenue Code. The procedures outlined in these rules ensure compliance with the applicable rules, regulations, and determinations of the Internal Revenue Service. These rules also provide specific information necessary for members of the HPORS for their retirement planning. Those members who plan to participate in the DROP require clarification of the process for and implementation of the DROP, as well as the future financial implications of their decision to participate in the DROP. An in-depth understanding of the program is imperative for the member to know whether it is in their best interest to make this one-time irrevocable election.

New Rules X and XI are necessary in order to address the impact of USERRA service on the DROP participants. The purpose of USERRA is to ensure that employees called to service not be penalized upon their return to employment. USERRA protections, including the receipt of differential pay, extend to the employees retirement benefits and thus necessarily to their rights as DROP participants. The rules ensure that the participant's DROP account is not adversely impacted by uniformed service, provided the member returns to covered employment.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kris Vlastic, Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0513; telephone (406) 444-2578; fax (406) 444-5428; or e-mail kvladic@mt.gov, and must be received no later than 5:00 p.m., November 25, 2015.

5. Kris Vlastic, Montana Public Employee Retirement Administration has been designated to preside over and conduct this hearing.

6. 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 4 above or may be made by completing a request form at any rules hearing held by the board.

7. 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 the 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on July 24, 2015.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

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

/s/ Sheena Wilson
Sheena Wilson
President
Public Employees' Retirement Board

Certified to the Secretary of State October 19, 2015

DRAFT