

Public Employees' Retirement Board

December 10, 2015

Topic: Adoption of Proposed HPORS DROP Rules

Staff Recommendation:

Staff recommends the Board approve the proposed rules, as amended, implementing the HPORS DROP.

Discussion:

A hearing on the proposed rules was attended by several interested individuals. Testimony and comments have been received and are addressed in the Hearing Report filed by Hearing Officer William Holahan and the Notice of Adoption prepared by Melanie Symons. Changes have been made to New Rules V and IX based on the comments.

Board Motion:

Uphold Staff Recommendation

Other

Moved by

Seconded by

Vote

Highway Patrol Officer's Retirement System (HPORS) Deferred Retirement Option Plan (DROP) Rule Hearing Report

December 10, 2015

On November 18, 2015, staff for the Montana Public Employees' Retirement Administration (MPERA) on behalf of the Public Employees' Retirement Board (PERB), held a public rule hearing on the proposed adoption of the Highway Patrol Officer's Retirement System (HPORS) Deferred Retirement Option Program (DROP). William Holahan, a staff member of MPERA, acted as hearing officer to preside over the hearing.

The hearing commenced promptly at 2:00pm and began with the hearing officer reading a formal hearing script and a summary of each rule to members of the public present at the hearing. This was then followed by the central purpose of the hearing, to receive input from members of the public concerning the proposed rules. At this point in time, proponents of the HPORS DROP rules were called forward to provide comment.

The proponents of the rules appeared in the following order and put forth the following comments:

- 1) Melanie Symons, MPERA Chief Legal Counsel, Representing MPERA. Ms. Symons stated the Board's position in favor of adopting the proposed rules and provided a thorough overview of the content and function of the rules implementing the HPORS DROP.
- 2) Jessie Luther, Representing the Association of Montana Troopers (AMT). Ms. Luther expressed her support for the rules and suggested the Board adopt a rule with a contingent voidness clause because the HPORS DROP has not yet been approved by the Internal Revenue Service (IRS). Ms. Luther suggested that this rule would put HPORS members on notice that if they do enter the HPORS DROP there is some risk that the DROP might not be approved by the IRS and in such event, may require members to pay money back to the retirement system if they have ended their DROP period.
- 3) Tom Schneider, Representing the Montana Public Employees Association (MPEA). Mr. Schneider expressed his support for the rules and the adoption of the rules.

Neutral parties wishing to be heard appeared in the following order:

- 1) Doug Neil, Representing the Montana State Fireman's Association (MSFA). Mr. Neil posed a question regarding whether the HPORS DROP rules would allow for a HPORS DROP participant to return to active employment after the termination of the DROP program. Since the hearing did not allow for a question and answer session, Mr. Neil's inquiry was addressed by staff after the hearing concluded.

At the conclusion of public comment, attendees were reminded that written data and/or views and arguments could be submitted to the Board in writing before 5:00 PM on November 27, 2015.

This concluded the public hearing.

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

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

TO: All Concerned Persons

1. On October 29, 2015, the Public Employees' Retirement Board published MAR Notice No. 2-43-535 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1778 of the 2015 Montana Administrative Register, Issue Number 20.

2. The Public Employees' Retirement Board has adopted the following rules as proposed: New Rule I (2.43.4006), II (2.43.4009), III (2.43.4010), IV (2.43.4013), VI (2.43.4016), VII (2.43.4017), VIII (2.43.4018), X (2.43.4023) and XI (2.43.4024).

3. The Public Employees' Retirement Board has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE V (2.43.4015) ESTIMATED MONTHLY DROP ACCRUAL (1)

Once a member files an application to participate in the DROP and the participant's DROP period begins, ~~the participant may be paid~~ estimated monthly DROP accruals will be paid into the participant's DROP account.

(2) through (3)(c) remain as proposed.

AUTH: 19-2-403, 19-6-1003, MCA
IMP: 19-6-1003, 19-6-1005, MCA

NEW RULE IX EMPLOYMENT AFTER THE DROP PERIOD (1) remains as proposed.

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

(3) remains as proposed.

AUTH: 19-2-403, 19-6-1003, MCA
IMP: 19-6-1003, 19-6-1007, MCA

4. The Public Employees' Retirement Board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: An employee of the Legislative Services Division noted that it may be helpful to clarify under NEW RULE V that the estimated accruals may be deposited to the participant's DROP account, not directly to the participant.

RESPONSE 1: The board agrees and has amended NEW RULE V to address this concern.

COMMENT 2: An employee of the Legislative Services Division noted that the term "post-DROP employment" in NEW RULE IX could be misinterpreted and suggested it be clarified using the term "participant terminates HPORS employment."

RESPONSE 2: The board agrees with this comment, in general, and has amended NEW RULE IX to address the concern.

COMMENT 3: A commenter suggested the board adopt a rule with a contingent voidness clause because the HPORS DROP has not yet been approved by the Internal Revenue Service (IRS). The commenter suggested that this rule would put HPORS members on notice that if they do enter the HPORS DROP there is some risk that the DROP might not be approved by the IRS and in such event, DROP participants may be required to pay money back to the retirement system if they have ended their DROP period and been paid their DROP benefit.

RESPONSE 3: The board is satisfied that the contingent voidness clause listed in Section 10, Ch. 258, L. 2015 and contained in the most recent codification of the 2015 Montana Code Annotated is sufficient to put HPORS members on notice that there is some risk that an unfavorable ruling from the IRS is possible. Rules are not supposed to duplicate statute. The board will ensure that HPORS members are fully advised of the issue at the time they apply to participate in the DROP.

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

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

Certified to the Secretary of State December 14, 2015

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

(1) I, Sheena Wilson, President of the Public Employees' Retirement Board of the State of Montana, by virtue of and pursuant to the authority vested in me by 19-2-403, MCA, adopt the following rules:

NEW RULE 1	[2.43.4006]	DEFINITIONS
NEW RULE 2	[2.43.4009]	DROP APPLICATION PROCESS
NEW RULE 3	[2.43.4010]	DROP PERIOD
NEW RULE 4	[2.43.4013]	DROP PARTICIPATION LIMITS
NEW RULE 5	[2.43.4015]	ESTIMATED MONTHLY DROP ACCRUAL
NEW RULE 6	[2.43.4016]	INTEREST PAID TO PARTICIPANTS
NEW RULE 7	[2.43.4017]	DISTRIBUTION OF DROP BENEFIT
NEW RULE 8	[2.43.4018]	DISTRIBUTION OF DROP BENEFIT PURSUANT TO FAMILY ORDER
NEW RULE 9	[2.43.4020]	EMPLOYMENT AFTER THE DROP PERIOD
NEW RULE 10	[2.43.4023]	IMPACT OF UNIFORMED SERVICE DURING DROP PERIOD
NEW RULE 11	[2.43.4024]	DIFFERENTIAL PAY FOR MILITARY LEAVE

(2) This order, after first being recorded in the order register of the Public Employees' Retirement Board, shall be forwarded to the Secretary of State for filing.

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

Certified to the Secretary of State December 14, 2015.