

E-MAIL COPY - SEN. ESSMANN REQUEST FOR AG OPINION - HB 454

June 21, 2013

Mr. Timothy Fox  
Montana Attorney General  
Department of Justice  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

Dear Attorney General Tim Fox:

Under the provisions of MCA 2-15-501 (7), I hereby request that you render an opinion on the proper interpretation of the laws regulating the processes and duties of the Public Employees Retirement Board (PERB) with regard to performing its duties to prepare an actuarial evaluation of the Public Employees Retirement System under House Bill 454 passed at the recently concluded 2013 Legislative Session.

1. Does the PERB have a legal and fiduciary obligation to have official actuarial evaluations done based on retirement laws in effect for the period that is being evaluated?
2. Alternatively, can the PERB base its official actuarial evaluation for a given fiscal year on retirement laws that will have been amended, replaced, or repealed by the start of that fiscal year? Or does the PERB have an obligation to use only the retirement laws in effect for that fiscal period as stated in (1)?
3. Are there any provisions in the law that would permit the PERB to ignore the letter of the law and base an actuarial evaluation on provisions that individual legislators state was their intent, several months after the session ended, or upon supposed fixes suggested by members of the Executive Branch that may or may not be passed by current or future legislatures?

Our suggested resolution to the above legal issues is as follows:

1. The issue was disclosed in the revised fiscal note prepared by Legislative Services on April 19, 2013. This disclosure as to the potential problems with the legislation, supports the plain reading of the law and using this interpretation in the actuarial evaluation.,
2. The actuarial evaluation should be prepared in accordance with the law as passed. The Legislature had ample opportunity to amend the bill in order to

resolve known issues. In fact, proposed fixes such as Amendment HB454001, which would have held the compromise together – either to stand in total or fall in total - in any legal challenge, were defeated.

3. The 2013 Legislature had the opportunity to fix the pension system in a manner that kept the promise to current retirees while providing relief to taxpayers from the uncertainties that will continue to exist with the current retirement system. The opportunity to reform the system was not seized and it now appears that the supposed "fix," did not fix anything.
4. The actuarial evaluation should reflect the law as is so that the people of Montana have a transparent and accurate accounting of the pension systems for which they are the guarantors. Beneficiaries of the current system are entitled to an accurate legal accounting of the system from which they benefit.

Thank you for your time and attention to this matter. Your opinion will resolve controversy surrounding the statutory duties of the PERB and will assist the members of the PERB in performance of their legal and fiduciary responsibilities, which carry legal liability.

A clarification will also ensure that the legislature can fulfill its responsibility to both the members of the system and the taxpayer. This is a problem that requires a fix and actual reform of the system. Doing this will protect the current retirees and remove the uncertainties of the burden placed on taxpayers for guaranteeing state employee lifetime benefits packages.

Sincerely,

Jeff Essmann  
President of the Montana State Senate