



**Montana Legislative Services Division**  
**Legal Services Office**

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**TO:** State Administration and Veterans' Affairs Interim Committee  
**FROM:** K. Virginia Aldrich  
**DATE:** November 12, 2015  
**RE:** Legislative Administrative Rule Review Report

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Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

**MAR NOTICE NUMBER:** 2-43-535

**AGENCY/BOARD:** Public Employees' Retirement Board

**RULE CLASSIFICATION:** (e.g. substantive/interpretative/emergency/temporary):  
Substantive

**SUBJECT:** Notice of Public Hearing on Proposed Adoption - Deferred Retirement Option Plan (DROP) for Members of the Highway Patrol Officers' Retirement System.

**NOTICE DESCRIPTION:** (e.g. proposal notice/adoption notice): Notice of Public Hearing on Proposed Adoption

**SUMMARY OF RULE(S):** The Public Employees' Retirement Board of the State of Montana (the Board) is proposing to adopt 11 new rules concerning a new Deferred Retirement Option Plan for members of the Highway Patrol Officers' Retirement System (HPORS) as provided by Ch. 258, L. 2015.

New Rule I provides certain DROP terminology and definitions, including the definition of "monthly DROP accrual." The statute implemented by the rule, created by Ch. 258, L. 2015, is potentially internally inconsistent because it instructs the Montana Public Employees' Retirement Administration (MPERA) to deposit interest on a monthly basis, and it implies the same interest should be deposited on an annual basis. The Board's proposed rule does not include interest in the monthly DROP accrual definition; because it is not included in this definition, the interest would be applied annually. This appears consistent with other statutes enacted by Ch. 258, L. 2015.

New Rule I defines "monthly DROP accrual" as "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." It does not specify that interest would be deposited monthly to the participant's account.

However, Ch. 258, L. 2015, specifies:

*Each month* during the DROP period . . . a participant DROP account must be credited with . . . interest *every fiscal yearend* at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend [emphasis added].

Thus, the statute appears to contain a conflict over whether interest earned and compounded annually is deposited in a member's account on a monthly basis or at the yearend. However, Ch. 258, L. 2015, also enacted language in a separate section specifying that "[t]he benefit paid pursuant to this section must include *interest credited to the participant's account every fiscal yearend* at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at a time other than a fiscal yearend" [emphasis added].

In the proposed rule, the definition of "monthly DROP accrual" does not include the statutory reference to monthly credits for the "interest every fiscal yearend." This interpretation is consistent with the rest of Ch. 258, L. 2015, as noted above. Nevertheless, it is inconsistent with the directive that "*each month . . . a participant's DROP account must be credited with . . . interest every fiscal yearend at the actuarially assumed rate of return*" (emphasis added). Thus, it is unclear whether the proposed rule meets legislative intent. If it does meet legislative intent, a statutory amendment may clarify that interest is to be deposited annually, rather than monthly.

New Rule II specifies the procedures for eligible members who wish to participate in the DROP, and it specifies that the election to participate in the DROP is irrevocable after the application has been filed.

New Rule III requires that participation in the DROP begin on the first day of a month and end on the last day of a month, and it notes that the DROP period ends as specified by the participant on the application, upon termination, or upon the participant's death, whichever happens first. New Rule III also specifies that a participant does not receive a retirement benefit or a portion of the monthly benefit for the month in which the participant terminates or dies; the DROP period ends on the last day of the last full month of active service. Sec. 5, Ch. 258, L. 2015, requires that member contributions "must be made" to the member's DROP account, and a participant's DROP account "must be credited with" 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. . . ." Thus, although the statute requires certain accruals to be added to the participant's account, the statute does not contemplate partial months upon the member's participant's termination or death.

New Rule IV clarifies that a participant is not eligible for disability retirement while participating in the DROP, is unable to purchase service, and may not receive membership or service credit, except as provided in New Rule X, which deals with uniformed service during the DROP period. Sec. 4, Ch. 258, L. 2015, specifies that "[a] participant in the DROP remains a member of the retirement system but may not receive membership service or service credit in the system for the duration of the participant's DROP period." Furthermore, it provides that if participation is interrupted by military service or disability before retirement, "the duration of the absence may not be included in calculating the DROP period"; however, it does not otherwise address disability or military service.

New Rule V allows a participant in the DROP to be paid estimated monthly DROP accruals without certain documents required from the employer on file but after three months suspends those payments if the employer has not provided the documents to MPERA to allow MPERA to determine the participant's total service credit and highest average compensation. Although Sec. 5, Ch. 258, L. 2015, requires that a participant's DROP account "[e]ach month during the drop period . . . must be credited with . . . the monthly benefit," New Rule V addresses situations in which MPERA has not received outstanding employer's documentation to determine the benefit. The rule does specify that the monthly benefit resumes after the documents have been received and the benefit has been approved, and the rule also specifies that retroactive payments will be made, if necessary.

New Rule VI requires that a DROP account include compounded annual interest fixed at the end of each fiscal year equaling the actuarially assumed rate of return for the trust fund.

New Rule VII specifies that the DROP benefit is distributed in a lump sum or in a rollover to another eligible plan to the participant, or upon the participant's death to the participant's survivors or beneficiaries, upon the participant's termination of employment, and it provides requirements for designating a distribution method. Although Sec. 8, Ch. 258, L. 2015, allows a participant to receive the distribution as a lump sum or in a rollover, Sec. 6 deals with survivorship benefits and contemplates only a lump-sum benefit. However, Sec. 3, Ch. 258, L. 2015, requires that MPERA administer the DROP in compliance with the Internal Revenue Code and the administrative rules of the Internal Revenue Service. The rule notes that a direct rollover for survivors or beneficiaries is allowed by the IRS.

New Rule VIII specifies when a family law order may distribute a portion of the DROP participant's DROP benefit to an alternate payee, and it forbids a family law order from requiring or forbidding a payee to participate in the DROP.

New Rule IX states that a participant's monthly service retirement benefit payment will begin the month following the month in which the participant terminates post-DROP employment, and it notes that a participant's DROP accruals cease at the end of the designated DROP period even if the participant continues HPORS-covered employment; however, it allows a participant to extend a DROP period under New Rule X, which relates to uniformed service under the DROP period.

New Rules X and XI address the impact of uniformed service on DROP accruals. Specifically, New Rule X requires employees who are called to duty to make an irrevocable election within 90 days of returning to employment concerning whether the time served in the uniformed services will be included in the original DROP period or added to the end of the original DROP period. This election affects when accruals are made to that participant's account and the compensation used to determine the accruals. New Rule XI requires that employers continue to pay contributions to the retirement system for differential pay to a participant who leaves HPORS-covered employment to serve in the uniformed services, and it requires that participant's contributions for the differential pay be paid to the participant's DROP account. MPERA notes that New Rules X and XI "are necessary in order to address the impact of USERRA [Uniformed Services Employment and Reemployment Rights Act] service on the DROP participants." Ch. 258, L. 2015, requires compliance with the Internal Revenue Code, which specifies certain rules concerning the interaction of USERRA with tax-qualified retirement plans, and section 10-1-1004, MCA, entitles individuals ordered to federally funded military service to all the employment and reemployment rights and benefits under USERRA.

**NOTES:** A public hearing is scheduled for November 18, 2015, at 2:00 p.m. in Room 201, 100 N. Park Avenue, Helena, Montana. The public comment period ends on November 27, 2015.

**FULL TEXT OF NOTICE:** The full text of the notice proposal is available online at <http://www.mtrules.org/gateway/ShowNoticeFile.asp?TID=6741>.

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