



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee
FROM: K. Virginia Aldrich
DATE: January 6, 2016
RE: Legislative Administrative Rule Review Report

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: 2-43-536

AGENCY/BOARD: Public Employees' Retirement Board

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

SUBJECT: Notice of Proposed Adoption - Redirection of Certain PERS Employer Contributions From the Defined Benefit Trust Fund for the Purposes of Paying Off the Plan Choice Rate Unfunded Actuarial Liability to Defined Contribution Member Accounts.

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 one new rule concerning the reallocation of certain employer contributions. Currently, a percentage of the Public Employees' Retirement System (PERS) employer contributions for employees participating in the Defined Contribution Retirement Plan (DCRP) is allocated to the Defined Benefit Retirement Plan to pay off the unfunded actuarial liability created by PERS members who elected to participate in the DCRP, also known as the "plan choice rate". The Board's actuary has determined that the plan choice rate unfunded liability will be paid off in the first quarter of 2016.

The proposed rule provides that employer contributions previously allocated to the plan choice rate will be reallocated to members' accounts "starting with that member's first payday in the month following the board's verification that the [plan choice rate unfunded actuarial liability] has been fully paid off." However, Ch. 170, L. 2015, provided that "[e]ffective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial

liability is paid off, the 2.37% of compensation . . . must be allocated to the member's retirement account". Thus, after the plan choice rate unfunded actuarial liability is paid off, the Board proposes to reallocate the employer contributions to member accounts on the member's first payday in the following month rather than the member's "first full pay period" as directed by statute.

The Board explained its reasoning for its departure from the statute:

There are over 230 employers with employees participating in the DCRP and over 500 employers with [Public Employees' Retirement System] participants. [Montana Public Employee Retirement Administration (MPERA)] does not track employer-specific pay periods and is therefore currently unable to identify each employer's first full pay period in any month. MPERA's IT programmers have estimated that it would take 600 hours to program all employers' pay periods, at a cost of \$66,600.

Reallocation of the applicable employer contributions to DCRP members on starting with each member's first payday in the month following board verification can be programmed in approximately 70 hours at a cost of \$7,770. Based on the employer reporting process established in ARM 2.43.2114 and the two-day window for transmittal of contributions to the record keeper pursuant to ARM 2.43.3532, the reallocated contributions will be credited to the member's account approximately seven days following the payday. The proposed reallocation would also result in the DCRP members receiving the contributions at least one payday earlier than under the "first full pay period" scenario, with no impact on the date the [plan choice rate unfunded liability] is totally paid off. Given the associated costs of both processes, the board believes it fiscally prudent and fiducially responsible to reallocate the applicable employer contributions on the first payday of the month.

Furthermore, MPERA notes that the plan choice rate unfunded actuarial liability will be paid off soon, but programming according to the statute would take a substantial amount of time. Nevertheless, the conflict between the rule and the statutory requirements contained in Ch. 170, L. 2015, raises a potential legal issue.

Additionally, the rule provides that employer contributions will be credited to member accounts pursuant to existing process established in ARM 2.43.2114 and ARM 2.43.3532.

NOTES: A public hearing is not contemplated. The public comment period ends on January 21, 2016.

FULL TEXT OF NOTICE: The full text of the notice proposal is available online at http://www.mtrules.org/gateway/Cycle_Home.asp?CID=2258.

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