



Montana Legislative Services Division
Legal Services Office

TO: Legislative Finance Committee

FROM: Julie Johnson, Legal Services Office

RE: Update on Litigation and Settlement of Pension Lawsuits from 2013 Session

DATE: September 9, 2015

The two lawsuits challenging the reduction of the Guaranteed Annual Benefit Adjustment, or GABA, as provided for in House Bill Nos. 377 and 454 from the 2013 legislative session, have been resolved.

PERS Lawsuit

In March 2015, Judge Reynolds issued a permanent injunction in Association of Montana Retired Public Employees v. State of Montana. The injunction prevented the State from reducing the Guaranteed Annual Benefit Adjustment, or GABA, from 3 percent to 1.5 percent for state retirees as required under Section 5 of House Bill No. 454 from the 2013 legislative session. In his decision, Judge Reynolds concluded that reducing the GABA “constitutes a substantial impairment of retired public employees’ contract rights” and that this substantial impairment “is in violation of the contract clause of both the Montana and U.S. Constitutions.”

Both sides appealed the decision to the Montana Supreme Court (Case No. DA 15-0140). However, prior to submitting their appellate briefs, the parties reached a stipulation, which was filed with the Supreme Court on July 21. The stipulation provides that:

- the parties dismiss their appeals;
- Reynolds' order granting a permanent injunction shall remain in effect and is limited to the constitutionality of the portion of HB 454 that reduced the GABA from 3 percent to 1.5 percent;
- Reynolds' order would not have the effect of collateral estoppel, that is, the order does not set precedent for any litigation regarding any prospective changes to the Public Employees' Retirement System;
- the district court should clarify that the scope of its order is limited to those employees employed prior to July 1, 2013; and
- each party bears its own costs and fees.

The Supreme Court issued an order on July 23, 2015, incorporating the terms of the stipulation and dismissing the appeals.

TRS Lawsuit

On June 30, 2015, District Court Judge Mike Menahan granted summary judgment in favor of the plaintiffs in Byrne v. State of Montana (ADV-2013-738). The court found that the GABA is part of Teachers' Retirement System benefits and is subject to protection under the "contracts clause" of the Montana Constitution.

On August 20, 2015, the Attorney General's Office, on behalf of the State and TRS, entered into a settlement agreement that upholds Judge Menahan's decision. The stipulation provides that:

- the State will not appeal the order on summary judgment;
- the plaintiffs waive any claim for attorney fees; and
- Menahan's order granting a permanent injunction shall remain in effect and is limited to the constitutionality of the portion of HB 377 that reduced the GABA (section 11).

According to the Teachers' Retirement System, the agreement means that eligible Tier One members of TRS, those hired prior to July 1, 2013, will continue to receive a 1.5 percent GABA. Eligible Tier Two members of TRS, those hired on or after July 1, 2013, will receive a variable GABA ranging from a minimum of 0.5 percent to a maximum of 1.5 percent on January 1 of each year depending on the funded status of the plan.