



**State Administration and Veterans' Affairs Interim Committee**  
**65th Montana Legislature**

**SENATE MEMBERS**

SUE MALEK--Chair  
DOUG KARY--Vice Chair  
DEE BROWN  
FRANK SMITH

**HOUSE MEMBERS**

DENISE HAYMAN  
FORREST MANDEVILLE  
WENDY MCKAMEY  
KATHY SWANSON

**COMMITTEE STAFF**

SHERI SCURR, Lead Staff  
K. VIRGINIA ALDRICH, Staff Attorney  
JENNI CARR, Secretary

**TO:** State Administration and Veterans' Affairs Interim Committee

**FROM:** K. Virginia Aldrich

**DATE:** July 9, 2018

**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:** 2-43-576

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

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

**SUBJECT:** Commencement of Guaranteed Annual Benefit Adjustment

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

**SUMMARY OF RULE(S):** The Public Employees' Retirement Board proposes to adopt one new rule concerning the commencement of the Guaranteed Annual Benefit Adjustment (GABA) for all retirement systems under its purview.

The proposed rule provides that "[i]f otherwise eligible," a retirement system member receives the GABA in a January benefit if the member has been receiving a monthly benefit for 12 months, and eligible months start when the first benefit payment is made. However, the rule also provides that if a member timely applies to begin retirement in January but the payment is not paid until a later month "through no fault of the member," then the member will be eligible for the following January's GABA. The rule requires a member to apply on or before the 10th of the month in addition to other application requirements to be considered timely. The Board's proposed rule states that a timely application is "dependent upon individual circumstances" and

specifies that the Deferred Retirement Option Plan of the Municipal Police Officers' Retirement System is subject to another rule's requirements to be considered "timely." Presumably, the Board's "individual circumstances" language refers to the requirements of each particular plan.

The Board states that administrative delays not attributable to the member can cause retirement benefits starting January 1 to be paid in a later month. Thus, the Board felt the rule was necessary to clarify that when a delay is not attributable to the member, the 12-month period commences when the retiree was eligible for payment, even if the payment did not occur until later. However, if the delay was attributable to the member, the 12-month period would not start until the initial payment occurs. The Board cites the Legislature's Section 43, Ch. 370, L. 1997, which states that "[a]n inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a 'retiree' during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date."

In the retirement systems, a retirement benefit is payable dependent on whether the recipient's benefit was "payable during the preceding January." *See* 19-3-1605, 19-5-901, 19-5-902, 19-6-710, 19-6-711, 19-6-712, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011, MCA. This language is ambiguous because it is not clear whether the benefit had to have been paid in January or was eligible to have been paid in January, even if paid in a later month. The Board has chosen to interpret the language as explained above.

Although the rule covers multiple retirement systems and many of the GABA requirements are similar across the systems, in some of the retirement systems cited the requirements differ. In almost all cases, the initial GABA is applied in January following a full year of retirement benefits. However, in the Highway Patrol Officers' Retirement System (HPORS), the benefit's commencement date for certain beneficiaries must be at least 36 months prior to January 1 of the year in which the adjustment is made. *See* section 19-6-712, MCA. Although the rule appears to contradict this requirement, the additional HPORS requirements are likely covered by the "[i]f otherwise eligible language" caveat found at the beginning of the rule.

**NOTES:** The public comment period ends on August 3, 2018, and the rules are proposed to be adopted on August 25, 2018.

**FULL TEXT OF NOTICE:** The full text of the notice proposal may be found at [http://www.mtrules.org/gateway/Cycle\\_Home.asp?CID=2759](http://www.mtrules.org/gateway/Cycle_Home.asp?CID=2759).