

July 11, 2013

Senator Llew Jones, Presiding Officer
Representative Galen Hollenbaugh, Vice-Presiding Officer
Legislative Finance Committee
Room 110 Capitol Building
P O Box 201711
Helena MT 59620-1711

Dear Senator Jones and Representative Hollenbaugh:

The Public Employees' Retirement Board (Board) has received the June 12, 2013 letter from the Legislative Finance Committee (LFC) requesting the Board to repeal or withdraw its temporary emergency rules contained in the Montana Administrative Register 2-43-478. While the Board appreciates the LFC's concerns, the Board will not be honoring the request to repeal the temporary emergency rules.

Following discussion at the June 13, 2013 Board meeting, the Legislative Committee's June 19, 2013 meeting, input from the Board's actuary, and discussion at the July 11, 2013 State Administration and Veterans' Affairs interim committee meeting, the Board made the following determination at its July 11, 2013, meeting.

First, the Board has previously determined the rules to be necessary to address "an imminent peril to the public health, safety, or welfare" as required by § 2-4-303(1)(a), MCA. Specifically, HB 454, along with the Board's next actuarial valuation of PERS, will impact the guaranteed annual benefit adjustment (GABA) paid to current retirees, as well as the contribution rates paid by members of PERS and their employers. The Board reaffirms that determination. There are nearly 19,000 retirees or beneficiaries whose expected retirement benefit will be significantly impacted. Additionally, over 28,000 active PERS members and 538 employers will see their respective PERS contributions increased by a full percent. Since the FY13 PERS actuarial valuation plays an important role in determining the GABA and the contribution rates, it is vital that the actuary's request for direction regarding perceived ambiguities be addressed prior to commencement of the valuation. .

Second, HB 454 permanently reduces the GABA to a rate not to exceed 1.5%. It also increases the employee and employer contributions by 1% until a specific trigger occurs. The bill is clear

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and contains no ambiguity with respect to the triggers related to changes in the GABA and contribution rates going forward. Those triggers are based on information obtained through the annual actuarial valuations. MPERA staff has discussed with its actuary the LFC's request to use the laws in effect as of June 30, 2013 when conducting the FY13 valuation. According to the actuary, actuarial standards require the valuation to reflect the plan or statutes as they are written, both currently and going forward. If there are ambiguities, the actuary is to obtain an interpretation from the plan sponsor regarding the terms of the plan document or statutes. The temporary emergency rules provide that interpretation.

Standard of Practice #41 pertains to actuarial valuations conducted for public plans. That standard provides that if an entity directs the actuary to conduct the valuation in a specific manner other than as clearly provided, the actuary must state the source of the direction. If the actuary disagrees with the entity, he must include a statement in the valuation explaining why he disagrees. According to the Board's actuary, PERS actuarial valuations have historically always taken into account the effect of new laws on the plan. To do otherwise for FY13 would result in a Standard of Practice #41 statement from the actuary disagreeing with the instructions.

Finally, and perhaps most critically, the fiscal note addressing the final version of HB 454 used a GABA of 1.5% and provided the exact same conclusions as those reached by the Board and its actuary. The impact of the two triggers, and the final amendments to the bill, were fully disclosed to the legislature. The Board's rules merely mirror the information contained in the fiscal note.

For the reasons stated above, the Board respectfully must decline LFC's request.

Sincerely,

Scott Moore
PERB President

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