



Montana Legislative Services Division
Legal Services Office

April 23, 2015

Re: ARM 2.43.3505 Establishment of Long-Term Disability Trust Fund

Dear Senator Brown, Chairman, Senate State Administration & Veterans' Affairs Committee, and Representative Essmann, Chairman, House State Administration & Veterans' Affairs Committee,

The Montana Public Employees' Retirement Board has proposed to amend rule ARM 2.43.3505 on June 26, 2015 which concerns the long-term disability trust fund for the DC plan. Because the State Administration and Veterans' Affairs Interim Committee will likely not meet until after this rule is adopted and because this rule reverses a previous policy decision concerning the investment of DC plan disability trust funds, I am notifying you for your information and awareness.

A legal review has not identified procedural issues with the proposed rule amendment for the Committee's awareness; however, the proposed rule is reversing the Montana Public Employees' Retirement System Board's previous policy not to invest long-term disability funds in equities. Previously, long-term disability funds were not considered by the Board to be public retirement system assets, which can be invested in private corporate capital stock under Article VIII, section 13, of the Montana Constitution. Most other public funds may not be invested in private corporate capital stock. However, the actuary for MPERA determined that the long-term disability plan is an "Other Post-Employment Benefit" (OPEB). The Board has determined that, as an OPEB, the long-term disability plan assets qualify as public retirement system assets under Article VIII, section 13, and therefore, the funds can be invested in certain collective investment funds. The pertinent proposed amendment reads:

(2) The Long-Term Disability Trust Fund is a governmental plan under Internal Revenue Code section 401(a)(24) and may be invested in one or more group trust funds as determined by the Montana Board of Investments.

....
~~(4) (5) In addition to the requirements of (2), funds in the Long-Term Disability Trust Fund will be invested pursuant to Article VIII, section 13, of the Constitution and Title 17, chapter 6, part 2, MCA. No funds will be invested in equities.~~

As noted in the announcement, the policy change is consistent with HB 124, which provided in Section 19-2-504, MCA, that:

The pension trust funds and the defined contribution retirement plan's long-term disability plan trust fund provided for in 19-3-2141 may be commingled for investment purposes, but separate accounts must be maintained for each system. to the extent permitted by Montana law and as permitted under I.R.S. Revenue Ruling 81-100, 1981-1 Cumulative Bulletin 326, I.R.S. Revenue Ruling 2004-67, 2004-2 Cumulative Bulletin

28, I.R.S. Revenue Ruling 2011-1, 2011-2 Internal Revenue Bulletin 251, and I.R.S. Revenue Ruling 2014-24, 2014-37 Internal Revenue Bulletin 529 if:

(a) the trust funds are operated or maintained exclusively for the commingling and collective investment of money; and

(b) the trust funds in the group trust consist exclusively of trust assets held under retirement systems or plans qualified under one or more of the following:

(i) section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(ii) individual retirement accounts that are exempt under section 408(e) of the Internal Revenue Code, 26 U.S.C. 408(e);

(iii) eligible governmental plans that meet the requirements of section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b); and

(iv) governmental plans under section 401(a)(24) of the Internal Revenue Code, 26 U.S.C. 401(a)(24).

I have attached a copy of the proposed rule to this letter. Public comment remains open until May 15, 2015.

Respectfully,

K. Virginia Aldrich
Legislative Attorney

cc: Sheri Scurr, Rachel Weiss

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