

BEFORE THE MONTANA PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF ADOPTION OF
Temporary Emergency Rules I-IV that	)	TEMPORARY EMERGENCY RULES
establish criteria to be used by the	)	
Board's actuary to obtain information	)	
related to PERS, its amortization	)	
period, its funding status, its future	)	
GABA rates, and its actuarial	)	
equivalent factors	)	

TO: All Concerned Persons

1. The Montana Public Employees' Retirement Board is adopting the following emergency rules because sections 3, 4, 5, 6 and 7, Chapter 390, Laws of 2013, require the Board's actuary to provide important actuarial analyses of the Public Employees' Retirement System as part of its actuarial valuation of the system for fiscal year 2013. In addition to the yearly actuarial valuation of the system, the actuary must determine amortization periods and funding level percentages based in part on guaranteed annual benefit adjustment (GABA) rates that, under Chapter 390, Laws of 2013, are fluctuating and uncertain; and on contribution increases which are subject to triggers impacted by those fluctuating and uncertain GABA rates. The FY 2013 valuation will commence in July 2013, prior to the time in which the necessary rules could be adopted through the regular rule-making process.

The rules are necessary to provide direction to the actuary regarding assumptions required for determining accurate and helpful valuations, including projections of amortization periods and funding level percentages. The rules will also assist the actuary in establishing yearly GABA rates and providing actuarial equivalent factors to be used for calculating money purchase retirement benefits, early retirement reductions, optional benefits, and the cost of various service purchases.

2. The Montana Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana Public Employees' Retirement Administration no later than 5:00 p.m. on July 1, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vlastic, Montana Public Employees' Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service/etc. (406) 444-1421; or e-mail [kvlastic@mt.gov](mailto:kvlastic@mt.gov).

3. The temporary emergency rules will be effective July 1, 2013.

4. The text of the temporary emergency rules provide as follows:

RULE I APPLICATION OF ACTUARIAL ASSUMPTIONS FOR TESTING PURPOSES (1) For purposes of determining the PERS funding level percentage referenced in 19-3-1605(5)(a), MCA the actuary will:

- (a) assume a GABA percentage rate of 1.5% for future years;
- (b) assume the actuarial value of the assets; and
- (c) set the funding percentage rounded to the nearest whole number.

(2) For purposes of determining the amortization period referenced in 19-3-1605(5)(b), MCA the actuary will:

- (a) assume a GABA percentage rate of 1.5% for future years; and
- (b) assume the actuarial value of the assets.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for implementing Chapter 390, Laws of 2013. The actuary must determine the PERS funding percentage and the amortization period in order to set a GABA rate. However, the assumptions used to determine both the funding percentage and the amortization period include an established GABA rate. Actuarial valuations based on assumptions that change based on other assumptions are not as reliable as valuations based on established assumptions. Thus an initial GABA rate is necessary to start the calculations.

The current 3% GABA is significantly higher than future GABAs and would result in a significantly greater unfunded liability and longer amortization period than actually exists under a reduced GABA. Chapter 390, Laws of 2013 establishes a GABA with a 0% floor and a 1.5% ceiling, together with contribution and funding triggers designed to amend the GABA in increments of one tenth of one percent. The Board has established the assumption of 1.5% for the testing GABA rate because, as the highest possible GABA under Chapter 390, Laws of 2013, it will result in the largest possible reasonable liability, thus assuring the legislative goal of bringing the system to a position of actuarially sound funding.

The Board has determined to use the actuarial value of assets rather than the market value of assets as the actuarial value of assets is the industry-accepted standard and is currently relied on when conducting annual actuarial valuations for all retirement systems administered by MPERA.

The Board has determined to set the funding percentage as a whole number to facilitate its decision in Rule II below to only reduce the GABA for each full 2% the funding percentage is below 90%.

RULE II APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING GABA (1) For purposes of determining the PERS GABA rates referenced in 19-3-1605(5), MCA the actuary will:

(a) reduce the 1.5% GABA rate established in 19-3-1605(4), MCA by 0.1% for each full 2 percentage points the funded percentage is below 90%;

(b) establish a GABA rate expressed in tenths of a percent.

(2) This rule will not apply until the PERS amortization period is under 40 years.

(3) Once the PERS amortization period is under 40 years, the actuary will adjust the 1.5% GABA each year, based on that year's funding percentage.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for determining the GABA rate to be applied to PERS retiree benefits on an annual basis.

The actuary questioned whether GABA should be reduced proportionately. For example, if the funded percentage is 79%, should the GABA be reduced from 1.5% to .95% ( $90\% - 79\%/2 = .55\%$ ;  $1.5\% - .55\% = .95\%$ )? The Board determined that reductions in one tenth of one percent would be sufficient to meet the legislative goal of bringing the system to a position of actuarially sound funding while maintaining the ability to explain the GABA reductions to members and without causing undue administrative hardship. Thus, in the above example, the GABA rate would be reduced from 1.5% to 1% ( $90\% - 80\%/2 = .5\%$ ;  $1.5\% - .50\% = 1.0\%$ ).

Subsections (2) and (3) are necessary to specify how the GABA rate will be calculated each year after the amortization period is below 40 years. Members and stakeholders have questioned whether the legislation provides a mechanism for changing the GABA each year. The Board believes the legislation was intended to allow the GABA to be recalculated and reset each year in a manner consistent with 19-3-1605(5), MCA.

RULE III APPLICATION OF ACTUARIAL ASSUMPTIONS AND PROCESS FOR DETERMINING ACTUARIAL EQUIVALENT FACTORS (1) For purposes of determining actuarial equivalent factors for optional benefit determinations, early retirement factors, money purchase benefit calculations, and service purchases, the actuary will:

(a) assume a 1.5% GABA rate for future years; and

(b) establish new actuarial equivalent factors effective January 1, 2014 following the fiscal year 2013 actuarial valuation.

(2) The 1.5% GABA rate established in subsection (1)(a) above is prospective only. Optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases implemented prior to July 1, 2013, will not be affected.

(3) Prior to January 1, 2014, MPERA will work with members regarding the options available to them regarding optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases.

(4) In the event of a court order prohibiting the board from implementing a 1.5% GABA rate pursuant to 19-3-1605, MCA, the actuary will continue assuming a 3% GABA rate until the court order is amended or lifted.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for determining actuarial equivalent factors used for calculating various actuarially-equivalent benefits and the cost of various service purchases. The GABA rate is an important assumption in these calculations.

Chapter 390, Laws of 2013 establishes a GABA with 0% floor and a 1.5% ceiling, together with contribution and funding triggers designed to amend the GABA in increments of one tenth of one percent. Actuarial valuations based on assumptions that change based on other assumptions are not as reliable as valuations based on established assumptions. The Board has determined to use the ceiling of 1.5% because it will result in the largest possible liability, and the highest average service purchase cost, thus assuring the legislative goal of bringing the system to a position of actuarially sound funding.

Subsections (2) and (3) are necessary as the Board has been contacted by members concerned that their prior service purchases were based on assumptions that are no longer true.

Subsection (4) is necessary as the Board has been advised that a lawsuit challenging the constitutionality of a decreased GABA rate is pending and that the plaintiffs would be seeking an injunction to prevent implementation of the new GABA rate pending resolution of the lawsuit.

RULE IV APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING THE AMOUNT OF COAL SEVERANCE TAX AND INTEREST INCOME STATUTORILY APPROPRIATED TO THE PERS DEFINED BENEFIT PLAN TRUST FUND

(1) For purposes of determining the annual amount of coal severance tax and interest income from the coal tax severance permanent fund that will be statutorily appropriated to the PERS defined benefit plan trust fund, the actuary will rely on reports provided to the board by the Office of Budget and Program Planning.

(2) The report provided to the board pursuant to subsection (1) above will be available on the board's website on or before July 31 of each applicable year.

AUTH: 19-2-403, MCA

IMP: 19-2-405, MCA

STATEMENT OF REASONABLE NECESSITY: Sections 1 and 2, Chapter 390, Laws of 2013 provide for payment of an unknown amount of coal severance tax

funds and a maximum amount of interest income from the coal severance tax permanent tax fund. The exact amount of those statutory appropriations must be provided to the Board so that its actuary can include those amounts in the annual PERS actuarial valuation. The Office of Budget and Program Planning has indicated that it will provide this information to the Board as needed.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rules.

6. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Roxanne Minnehan at the address above.

7. The Montana Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the Montana Public Employees' Retirement Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Melanie Symons  
Melanie Symons Legal Counsel  
and Rule Reviewer

/s/ Scott Moore  
Scott Moore  
Board President  
Public Employees' Retirement Board

Certified to the Secretary of State June 10, 2013