

## **Background Outline on Rule Review Issues for HB 454 - Revising PERS**

Prepared by Sheri Scurr, Legislative Services Division  
For the State Administration and Veterans' Affairs Interim Committee  
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### **I. Key provisions of HB 454 as enacted**

- A. Increased employee contributions for employees hired before 7/1/2011 by 1%
  - 1. All employees must contribute 7.9%
  - 2. Legal issue - increase could be an unconstitutional contract impairment
    - a. So, increase was made temporary
    - b. Termination trigger was based on amortization period of 25 years or less, which mirrored current law terminating temporary employer contribution increases
- B. Increased the temporary employer contributions by 1%
  - 1. The trigger for termination of temporary employer contributions was already based on a 25-year amortization period or less
  - 2. The bill also changed termination from July 1 following the actuarial valuation to January 1 following the actuarial valuation
- C. Provided on-going funding from coal severance tax revenue and interest
- D. Reduced GABA from 3% to 1.5% for all members hired before 7/1/2007
  - 1. All members hired on or after 7/1/2007 already at 1.5% GABA
  - 2. Legal issue - reduction could be an unconstitutional contract impairment
    - a. So, reduction was based on funded ratio of the plan (i.e., 0.1% reduction for each 2% the plan was determined to be less than 90% funded)
    - b. Different trigger than amortization period for termination of contribution increases
- E. Last fiscal note
  - 1. Amortization period drops to 15.2 years
    - a. Triggers termination of temporary ee/er contribution increases
  - 2. Funded ratio improves to 78%
    - a. Requires 1.5% GABA to be reduced by 0.6% to 0.9%

## II. **PER Board temporary emergency rule - chronology**

- A. PER Board received request from actuary for clarification on what GABA rate to assume for actuarial valuation as of June 30, 2013
  - 1. GABA is a sliding rate based on funded ratio
  - 2. Funded ratio is determined by GABA liabilities
- B. Valuation will be used to determine:
  - 1. Amortization schedule - termination of increased contributions
  - 2. Funded ratio - increase or decrease in GABA
- C. PER Board presented draft rule to legislative staff and LFC
  - 1. SAVA staff emailed SAVA members about draft rules
  - 2. LFC received briefing from MPERA on rules
- D. LFC sent letter to PER Board, but is not the rule-review committee
  - 1. Objected to emergency rule on GABA rate
  - 2. Requested repeal of rule and use of June 30, 2013, law rather than law as amended by HB 454
- E. Sen. Essmann, as President of the Senate, requested an Attorney General Opinion on the power of the PER Board to adjust actuarial valuation assumptions.
  - 1. Current status is that the AG has received the request
  - 2. By statute, the AG has 3 months to produce the opinion
- F. PER Board is considering its response to the LFC letter
  - 1. MPERA legal staff has prepared a draft response
  - 2. Board waiting to hear SAVA discussion and possible action

## III. **Potential courses of action and effects**

- A. If PER Board keeps rule in place - actuary assumes 1.5% for all future years
  - 1. Amortization period likely to drop to 15.2 years
    - a. Triggers termination of temporary employer and employee contribution increases on Jan. 1, 2014
    - b. Amortization increases to 20.5 years on Jan. 1, 2014
  - 2. Funded ratio likely to improve to about 78%
    - a. Triggers GABA reduction of 0.1% for each 2% below 90% funded
    - b. GABA likely to become 0.9% on Jan. 1, 2014

- B. If PER Board instructs actuary to not consider HB 454 changes concerning GABA until July 20, 2014 - actuary assumes 3% GABA for members hired prior to July 1, 2007
  - 1. Amortization period likely to be more than 25 years
  - 2. 1% contribution increases remains in effect
  - 3. GABA reduced to zero if amortization period is 40 years or greater
  - 4. Funded ratio reduced - if funded ratio is 75% or less, GABA reduced to zero

IV. **Possible court challenges**

- A. Could be challenge to contribution increase for current employees
  - 1. No indication of this yet
  - 2. If found unconstitutional, no increase in employee contributions and any paid contribution increases would likely have to be refunded
- B. Could be challenge to GABA reduction to 1.5% for members hired before July 1, 2007
  - 1. Has been indicated
  - 2. Court decision could be based on effects to different groups
    - a. Retirees
      - (1) Retired or have service before July 1, 2007
      - (2) Retired on and after or have service on and after July 1, 2007
    - b. Active employees
      - (1) Service before July 1, 2007
      - (2) Service on and after July 1, 2007
  - 3. If GABA reduction found unconstitutional contract impairment, 3% GABA would have to be paid as directed by the court
    - a. Amortization period would increase
    - b. Funded ratio would decrease

V. **Options** (See "Overview of Rulemaking" memorandum by committee's legal staff, Ginger Aldrich, dated July 9, 2013, for review of committee's powers concerning rule review)

- A. Committee options
  - 1. No action
  - 2. Exercise committee powers as outlined in rulemaking overview
  - 3. Informally suggest a course of action to PER Board (i.e., oral suggestion during committee meeting)

- B. PER Board options
  - 1. No change in rule
  - 2. Change rule and have valuation based on law in effect June 30, 2013
    - a. GABA would be 3% for members hired prior to July 1, 2007
    - b. No contribution increases assumed
    - c. No coal tax money assumed
    - d. Departs from norm
  - 3. Request actuarial valuation include calculation of amortization period and funded ratio based on alternate scenarios
    - a. What if GABA reduction ruled unconstitutional?
    - b. What if GABA and employee contribution increase ruled unconstitutional?

VI. In Summary

- A. PER Board rule relates to actuarial assumption of future GABA rate
  - 1. Should it be fixed at 1.5% or a sliding percentage?
    - a. 1.5% is the highest liability possible
    - b. Sliding percentage is problematic and creates circular calculation
  - 2. Rule is not related to the trigger that terminates the temporary increase in employee and employer contributions and that trigger's coordination with the trigger for reducing the GABA
- B. LFC concern stems from the lack of coordination in HB 454 as enacted
  - 1. Belief that intent was that GABA would be funded at an unreduced amount before temporary contribution increases were terminated
  - 2. Coordination between GABA trigger and contributions trigger was stripped from the bill by amendments adopted in Senate Finance and Claims in the final days of the session
  - 3. If GABA reduction is found to be unconstitutional, coordination of triggers will be moot

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