



**Montana Legislative Services Division**  
**Office of Research and Policy Analysis**  
**David D. Bohyer, Director**

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January 16, 2008

TO: Rep. Pat Ingraham  
FROM: Dave Bohyer  
RE: Participation of local governments in the Public Employees' Retirement System (PERS)

You have requested information regarding the ability of local governments in Montana to be participating employers in the PERS. Please accept this memorandum as my initial response to your inquiry.

1945 - Public Employees' Retirement System<sup>1</sup>

Ch. 212, L. 1945, established the Public Employees' Retirement System for "...employees of the State of Montana and all employees of such cities and counties (except city policemen, city firemen and Montana state highway patrol)... as may elect to include their employees pursuant to contract..."<sup>2</sup>

As stated in the law, the purpose of the act was "... to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and to that end providing a retirement system consisting of retirement compensation and death benefits".<sup>3</sup>

Every state employee hired after January 1, 1945, who had been employed by the state for at least 6 months of uninterrupted service by January 1, 1946, was required to join the system and every state employee hired prior to July 1, 1945, regardless of

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<sup>1</sup> The narrative under this heading is largely copied from, *An Overview of the Development and Status of Montana's Public Employee Retirement Systems*, by David D. Bohyer, Legislative Services Division and David S. Niss, Legislative Services Division, October 2007.

<sup>2</sup> Ch. 212, L. 1945, as stated in the title of the bill (House Bill No. 110 (1945)).

<sup>3</sup> Section 1, Ch. 212, L. 1945. The language in HJR 59 (2007) commissioning the study of the state's public employee retirement systems directed the study committee to determine the "rationale" for the current retirement plan features of Montana's public employee retirement systems. The "purpose" section of Ch. 212, L. 1945, provides the original rationale.

duration of employment, was eligible to opt out of the system.<sup>4, 5</sup> Upon becoming a member of the system, the employee:

- contributed a percentage of compensation determined by the board to be actuarially sufficient to fund the employee's annuity payment.<sup>6</sup> The Board was to set the employee contribution rate on the basis of the actuarial assets and liabilities of the retirement fund and other actuarial variables. It appears that there was no uniform contribution rate for employees; rather:

The normal rates of contribution of members shall be based on sex and the age at the nearest birthday at the time of entrance into the retirement system. The normal rates of contribution shall be such as will provide an average annuity at age 65 equal to one one hundred-fortieth of the final compensation of members... for each year of service rendered after entering the system. Nothing in this section shall prevent the adoption of one schedule of rates for males and one schedule for females.<sup>7</sup>

- became eligible for a retirement benefit after accruing 30 years of continuous service and attaining the age of 65 years or more..
- upon retirement under the above-stated service thresholds became entitled to receive a service retirement allowance composed of:
  - ▶ an annuity equal to the actuarial equivalent of the employee's accumulated contributions at the time of retirement;
  - ▶ a pension equal to that portion of the annuity purchased by the accumulated normal contributions of the member; and
  - ▶ an additional pension for non-university system members equal to 1/70 of the average annual compensation in the 3 years prior to retirement multiplied by

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<sup>4</sup> A state employee hired prior to July 1, 1945, automatically became a member of the system, but could elect to not participate in the retirement system. A state employee who wished not to participate was required to file appropriate papers stating the desire to not participate. A state employee who wished to participate was not required to file anything, the default for then-current state employees being participation. The provisions of the law as applied to state employees applied in the same manner to the employees of cities, counties, and other political subdivisions that contracted with the state.

<sup>5</sup> The act specifically excluded from participation: elected officers; inmates of state institutions; persons in state institutions principally for the purpose of training; independent contractors; eligible employees who elected not to participate; persons directly appointed by the governor; and persons who were active members of any other public [federal, state, or local] retirement system. Elected officers and gubernatorial appointees could opt into the system. (Sections 4 and 5, Ch. 212, L. 1945.)

<sup>6</sup> Sections 14(j) and 18, Ch. 212, L. 1945.

<sup>7</sup> Section 18(g), Ch. 212, L. 1945. The subsequent subsection 18(h) stipulated that the actual annuity was to be the actuarial equivalent of the member's accumulated contributions.

the number of years of service.<sup>8</sup>

- upon retirement of a member at age 70 or more, the member was entitled to a second additional pension, not to exceed \$480 per year, that would make the member's total retirement benefit equal to 1/2 of the member's final compensation.
- upon retirement, was ineligible to be paid as an employee of any covered employer.

The employer of a member was required to contribute to the retirement fund 3% of the total compensation paid to the member.<sup>9</sup>

The language of the act implies that the objective of the retirement plan was to provide a total monetary benefit at full retirement, i.e., 30 years of service and age 65, equal to 1/2 of final compensation. Retirement with 30 years of service but prior to age 65 also appears to have been allowed, but with the retirement benefit reduced to reflect the actuarial consequences of retirement prior to age 65.

It also appears that a member could work more than 30 years or past the age of 65 [and continue in covered employment], but the additional years of work and contributions would not increase the member's retirement benefit.

While the PERS seemed to contemplate that members would normally retire at age 65 or older, it also established a mandatory retirement age of 75 years for the 5 years following enactment. Five years after enactment of Ch. 212, L. 1945, i.e., January 1, 1951, the mandatory retirement age was reduced to 70 years of age.

In 1981, Ch. 496, L. 1981, was adopted to allow a local government that had contracted with PERS to secede from participation by terminating the contract. (See section 19-2-301(3), MCA.)

### Local Government Withdrawal from PERS

A local government that has contracted under 19-3-201, MCA, to participate in PERS may also terminate the contract under section 19-3-201, MCA. In relevant part, 19-2-301, MCA, provides:

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<sup>8</sup> A person who had accumulated 30 years of service but had not reached age 65 could also retire, but the "additional pension" would be reduced to the actuarial equivalent on the basis of the retiree's age compared to 65. The "additional pension" was also payable to university system members and members from contracting cities, but at somewhat different amounts than was payable to state employees.

<sup>9</sup> The act capped at \$416.66 per month the maximum compensation upon which employer contributions were to be paid. (Sec. 36, Ch. 212, L. 1945.)

**19-3-201. Contracts with political subdivisions.** (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees....

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency.<sup>10</sup>

## Local Government Authority to Establish Retirement Plan

### *Self-Governing Jurisdictions*

Montana law provides for two types of local governance: self-governing powers and general government powers.

A local government that has adopted self-government powers has broad authority to conduct business under section 7-1-101, MCA.

**7-1-101. Self-government powers.** As provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may

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<sup>10</sup> This section was originally enacted March 16, 1945, as Sec. Ch. 212, L. 1945. It has been amended several times since enactment.

exercise any power not prohibited by the constitution, law, or charter. These powers include but are not limited to the powers granted to general power governments.

In addition to the general provisions of section 7-1-101, MCA, self-governing jurisdictions have the general authority to enter into contracts, e.g. a retirement plan. (See, e.g., sections 7-1-2103 (counties) and 7-1-4123 and 7-1-4124, MCA, (municipalities).)

The only statutory provision I could find that limits the ability of a self-governing local government with respect to public employee retirement is found in section 7-1-111, MCA. Although the "catch line" reads "powers prohibited", the specific language actually allows a local government to establish its own retirement plan(s). Section 7-1-111, MCA, states in relevant part:

**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) ....

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;... (*Emphasis added.*)

### *General Government Jurisdictions*

Most counties and incorporated cities and towns operate under general government powers. Under general government powers, a local government has general authority to enter into contracts. (See, e.g., sections 7-5-2101 and 7-5-4301, MCA.) Therefore, because retirement plans are essentially contracts, a county or municipality that operates under general government powers has the authority to establish a retirement plan for employees within the local government's jurisdiction.<sup>11</sup>

As an historical footnote, some local governments had established retirement plans for employees within their respective jurisdictions prior to the enactment of the Public Employees' Retirement System in 1945. Similarly, some local governments had established retirement plans for sheriffs, police officers, and firefighters prior to the enactment of state retirement plans for each of those groups, i.e.: the Sheriffs' Retirement System; the Municipal Police Officers' Retirement System; and the

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<sup>11</sup> General government employees (non-public safety occupations) are generally required to participate in PERS if their employer has contracted with PERS. Sheriffs' are generally required to participate in the state-administered Sheriffs' Retirement System, police officers, police officers may or may not be required to participate in the Municipal Police Officers' Retirement System; and full-paid firefighters of first- and second-class cities are generally required to participate in the Firefighters' Unified Retirement System.

Firefighters' Unified Retirement System. In fact, the record suggests that consolidation of the various municipalities' and counties' retirement systems into state-administered systems was a primary objective when the SRS, MPORS, and FURS were established.

### Summary and Conclusion

Local governments in Montana currently have and have had the legal authority to establish retirement plans for employees within their jurisdictions dating back to around 1900 and many local governments exercised the authority. Beginning in the mid-1900s, the state legislature provided for but did not require the consolidation of many local governments' retirement plans into various state-administered systems.

The largest of the state-administered systems, PERS, established in 1945, has allowed but not required local governments to participate in the PERS through contracts with the state. PERS also allows a local government to terminate the contract with PERS.

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