



Spring 2013

## Association of Montana Retired Public Employees

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*A non-profit corporation of PERA Retirees for PERA Retirees*

## Legislature Reduces GABA- AMRPE Will File Lawsuit

by Russell Wrigg, President

AMRPE needs your help. We will file a lawsuit over the provision in HB 454 that lowers the 3% Guaranteed Annual Benefit Adjustment (GABA) to 1.5% or even lower. AMRPE believes this action is in violation of the contract clause in our state and federal constitutions.

AMRPE has actively participated in efforts to make the PERS actuarially sound over several legislative sessions and interim committee meetings. We have consistently informed legislators and others that retired public employees have certain constitutional, statutory and legal rights that cannot be abridged.

House Bill 454 was introduced at the request of the Governor's office and originally provided that employers and employees would contribute an additional 1% of salary to the fund. It also included the unallocated portion of the coal severance tax, as well as a portion of the interest earned on the coal severance tax trust fund. AMRPE was the first to propose the use of coal severance tax revenues to help the various pension funds become actuarially sound (House Bill 632 in 2011 and HB 382 in 2013 Legislative Sessions). As introduced, this session's HB 454 assisted in making the PERS system actuarially sound. It initially **did not** contain provisions to modify the GABA. The first amendments to change the GABA were placed in the bill by action of the Joint Select Committee on Pensions. *See Leo Berry's article for more details on legislative actions on page 2 & 3.*

Many attempts were made by AMRPE and its members throughout the session to have current retirees' GABA removed from any "Pension Fix" bill, but sadly those attempts were unsuccessful. As a result we asked the Governor to veto this "bad bill", but he did not. The reduction harms and places the brunt of the pension fix on the backs of PERS retirees. We feel this is a direct violation of our "Contract Rights" specified in our law and constitutions.

The AMRPE board has retained the law firm of Browning, Kaleczyc, Berry and Hoven to represent us in this important legal undertaking. Leo Berry has been our legal advisor and lobbyist since the mid 1980's. We expect initial filings in the case will occur in September.

Litigation is expensive. Enclosed with this newsletter is a donation envelope that can be used to mail in any contribution you can afford. You can also donate at our website [www.amrpe.org](http://www.amrpe.org), which will connect you directly to Pay Pal. Any size donation will be welcome and will be used specifically toward defending your rights as a Montana public employee retiree. We all have much to lose over this revision to our retirement.

***Please provide us with your email address on the donation envelope or go to our web site and send us a message. We will be using email blasts to keep members informed during the course of the litigation. This keeps you informed and is a quick, free way of communication.***

[www.amrpe.org](http://www.amrpe.org)



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## 2013 LEGISLATIVE SUMMARY & HB 454

By Leo Berry

For those of you who have never seen the 1955 Spencer Tracy film *Bad Day at Black Rock*, it pretty well describes the 2013 Legislative Session. The Association started the session with two primary goals—one was to promote efforts that would make the trust fund actuarially sound. As you know, it currently is *not* actuarially sound and needs significant revenues to correct that situation. The other was to protect the Guaranteed Annual Benefit Adjustment (GABA).

There were numerous bills introduced concerning pensions and the fund. Because of the unusual number of bills and the high priority of the issues, the Legislature created a joint committee of the House and the Senate called the Select Committee on Pensions. All of the retirement bills from both House and Senate were referred to that Committee for hearing and initial action.

The primary debate during this legislative session was whether to retain the defined benefit plan like PERS as it is currently structured, or to change to a defined contribution plan that does not guarantee a certain benefit, but basically creates an individual retirement account that is self-directed by employees. It is essentially a 401(k) concept with the public employer and the employee contributing to the individual's account. Upon retirement, the employee uses whatever monies are in the account for retirement. The primary purpose is to shift the risk of a stock market downturn to the employee rather than the employer. There were 2 primary bills to change the system to a defined contribution plan—HB 338 by Rep. Keith Regier of Kalispell, and SB 82 by Sen. Dave Lewis of Helena.

The Association appeared in opposition to both of those bills, as they did not adequately fund the current PERS system. Another bill, SB 333 by Sen. Ron Arthun of Wilsall created a hybrid program that had elements of both defined contribution and the defined benefit plan. The Association merely monitored that bill. All three of those bills died in the process.

At the request of the Association, Rep. Liz Bangerter of Helena introduced HB 382 which helped reduce the unfunded liability by dedicating a portion of the coal tax revenues to the PERS trust fund. This is a modified version of HB 632, which the Association requested be introduced in the 2011 session. Unfortunately, HB 382 did not pass, but elements of it were incorporated into HB 454 by Rep. Bill McChesney of Miles City. As the legislative process wore on, HB 454 became the vehicle of choice to address the funding problem in the PERS system.

The Association supported that bill as introduced. It provided for a portion of the coal severance tax revenue and a portion of the interest on the coal severance tax trust fund be deposited in the fund. It also increased employee and employer contributions by 1% of salary. It did not modify the GABA. As introduced, HB454 would have made the fund actuarially sound within a reasonable amount of time.

Unfortunately, as the bill progressed, some legislators decided that in order to secure enough votes to pass the bill, the GABA would need to be amended. So Rep. Rob Cook of Conrad proposed amendments that would reduce the GABA from 3% to 1% for the majority of retirees and for those who had a 1.5% GABA to .5%. Importantly, it had a trigger in it that allowed the GABA to return to 3% and to 1.5% when certain actuarial valuations were met. It may have taken some time for that to occur, but at least the GABA would have returned to its original amount at some point. The bill was passed by the House and referred to Senate Finance and Claims Committee.

(continued on next page)

## 2013 LEGISLATIVE SUMMARY & HB 454(con.)

The Association appeared at the hearing and testified in favor of the bill, but opposed the Cook amendments that modified the GABA. Executive action occurred late in the session in mid-April. At that time, Sen. John Sesso of Butte proposed amendments, provided by the Governor's office, which removed the Cook amendments from the bill. It replaced them with provisions that permanently reduced the GABA from 3% to 1.5%, and contained a formula that further reduced the GABA, depending on the actuarial soundness of the fund. It has been estimated by the Public Employee Retirement Division that the GABA for 2014 will be .9%. Remarkably, the amendments did *not* contain the trigger to increase GABA when certain actuarial criteria were met. While the bill implies that the GABA can be increased to 1.5%, there is no mechanism in the bill to do so, and there is *no* provision to increase the GABA back to 3%.

The bill, as amended, passed the Senate and the House declined to vote on it until a fiscal note was prepared to explain the Sesso amendments. While we knew the amendments were bad for retirees, we were shocked to learn that the reduction in the GABA allowed the 1% increase from employees and employers to be terminated on January 1, 2014, a mere 6 months after the bill is effective.

While the monies from the coal tax certainly help, the bottom line is that by reducing the GABA, retirees are carrying the biggest burden in making the fund actuarially sound. This is clearly a breach in the employment contract and is constitutionally suspect. So at the end of the day, it was a Bad Day at Black Rock. Your Association has decided to legally challenge the provisions of HB 454 that reduce the GABA in court, and we will need your help in doing so. We *will* have our day in court, and hopefully, it won't turn out like the movie.

**Below are two examples to demonstrate the impact of the GABA reduction. The examples show annual retirement income of \$12,000 and \$24,000. The GABA is estimated to be reduced initially to 0.9% from 3%, and could gradually be increased back up to 1.5%. Go to [www.amrpe.org](http://www.amrpe.org) and use our calculation tool to determine your individual loss.**

| Year | Year | Annual Gross Benefits at 3% GABA | Annual Gross Benefits Under HB 454 | Annual Loss Due To HB 454 | Estimated GABA % | Cumulative Loss |
|------|------|----------------------------------|------------------------------------|---------------------------|------------------|-----------------|
| 1    | 2013 | \$12,000                         | \$12,000                           |                           |                  |                 |
| 5    | 2017 | \$13,506                         | \$12,487                           | \$(1,019)                 | 1.10%            | \$(2,534)       |
| 10   | 2022 | \$15,657                         | \$13,255                           | \$(2,403)                 | 1.30%            | \$(11,722)      |
| 15   | 2027 | \$18,151                         | \$14,223                           | \$(3,928)                 | 1.50%            | \$(28,259)      |
| 20   | 2032 | \$21,042                         | \$15,322                           | \$(5,720)                 | 1.50%            | \$(53,138)      |
| 25   | 2037 | \$24,394                         | \$16,506                           | \$(7,887)                 | 1.50%            | \$(88,077)      |
| 30   | 2042 | \$28,279                         | \$17,782                           | \$(10,497)                | 1.50%            | \$(135,151)     |

| Year | Year | Annual Gross Benefits at 3% GABA | Annual Gross Benefits Under HB 454 | Annual Loss Due To HB 454 | Estimated GABA Amount | Cumulative Loss |
|------|------|----------------------------------|------------------------------------|---------------------------|-----------------------|-----------------|
| 1    | 2013 | \$24,000                         | \$24,000                           |                           |                       |                 |
| 5    | 2017 | \$27,012                         | \$24,974                           | \$(2,038)                 | 1.10%                 | \$(5,068)       |
| 10   | 2022 | \$31,315                         | \$26,509                           | \$(4,805)                 | 1.30%                 | \$(23,443)      |
| 15   | 2027 | \$36,302                         | \$28,446                           | \$(7,857)                 | 1.50%                 | \$(56,518)      |
| 20   | 2032 | \$42,084                         | \$30,644                           | \$(11,440)                | 1.50%                 | \$(106,275)     |
| 25   | 2037 | \$48,787                         | \$33,012                           | \$(15,775)                | 1.50%                 | \$(176,154)     |
| 30   | 2042 | \$56,558                         | \$35,564                           | \$(20,994)                | 1.50%                 | \$(270,302)     |

## Other Legislation Report

By Leo Berry

In addition to the major pieces of legislation pertaining to defined benefit vs. defined contribution plans, there were numerous bills that the Association tracked and either supported or opposed in the 2013 legislative session. For a complete list of the bills, you can visit the Association's website, at [www.amrpe.org](http://www.amrpe.org). Here are a few of the more important bills that were introduced and in which the Association participated.

As mentioned, several bills were designed to help address the unfunded liability of PERS. One of those was HB95 by Rep. Frankie Wilmer of Bozeman. That bill required employers to make additional contributions to the system for those retirees who chose to return to work. It was signed by the Governor.

HB 97 by Rep. Frankie Wilmer placed a cap on earnings that may be included in the highest or final average compensation that's used to determine retirement benefits. This was the so-called "anti-spiking" bill that was designed to prevent people from gaining a significant increase in their retirement benefits because of a one-time bonus or because of a substantial increase in salary from the previous year. The bill limits consideration to 110% of the employees' compensation the previous year. In other words, if somebody received a 20% raise from one year to the next, only 10% of that raise would be considered in the retirement calculation. The concept behind the bill is to prevent employees from paying into the retirement fund at one level and receiving benefits at a higher level. The bill was signed by the Governor.

Two of the more interesting bills were HB 581 and SB 292, both of which were designed to simplify Montana's tax code. While the bills differed some in their approach, they essentially eliminated the current income tax deductions and exemptions from the Montana code, with a few exceptions. The Association was particularly interested in these bills because retirees enjoy a \$3,830 deduction for pension benefits. This deduction phases out at \$31,920. These bills, as introduced, would have eliminated that deduction. The Association opposed both of those bills because of the varying impacts they would have on retirees. The bills also adjusted the income tax rates so there would be "winners" and "losers" under the bill, depending on your particular situation. However both sponsors, Rep. Kris Hansen of Havre and Sen. Bruce Tutvedt of Kalispell, were agreeable to offer amendments to address the negative impacts of the elimination of the deduction. Because of Sen. Tutvedt's willingness to amend his bill to keep the \$3,830 deduction and to add additional benefits to those over 65, the Association supported Sen. Tutvedt's bill as it was amended. The bill was vetoed by the Governor. At the end of the day, public employee retirees retained their current deduction.

Another bill of interest was SB 353 by Sen. Walker of Billings which would have changed the makeup of the Public Employees Retirement Board. The bill required that at least three members have investment or financial planning experience. The bill would have also prohibited retirees from being members of the Board. That would have changed the focus of the Board substantially. The Association opposed that bill, and it failed to pass on second reading in the Senate.

### Moved? New EMAIL ADDRESS?

#### Membership Change of Address form on last page

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Or email us at [info@amrpe.org](mailto:info@amrpe.org)

## State Health Plan Changes

By John McEwen

The Department of Administration recently announced that pre-Medicare retirees who are on the state health plan can use the full range of services offered by the Montana Health Center, the clinic for employees that opened last August in Helena. Clinics in Billings and Miles City will be opening soon. All retirees on the plan can use the clinics for immunizations and for the health screening service.

The department is also working on a high deductible/health savings account option that may be offered during the annual change period this fall. This option will be made available to pre-Medicare retirees. Also the contract for vision services with EyeMed will end. A vision benefit will be added to the broader medical plan administered by CIGNA.

Now for some bad news! The employee pay bill included a 10% increase in the state share for each of the next two plan years, 2014 and 2015. So as retirees, we can expect a similar increase in our premiums. Watch for newsletters and meeting announcements from the department that will explain these items in more detail.

## Confusion Between AMRPE and AFSME

In our January newsletter, we also included a membership envelope if your dues were up for renewal. We only send out renewal notices in January/February with the newsletter, and dues are for that calendar year. However, there is another organization that has a similar name as ours, AFSCME, the American Federation of State, County, and Municipal Employees that occasionally solicits membership in their retirement arm of their union. This happened again this last winter, with some of you paying dues to AFSCME instead of AMRPE. We are the ONLY organization that is solely fighting for your retirement rights in the state legislature, and are made up of volunteer retirees working to save our retirement. So if you received a notice that you have not paid your dues, and you have, check to see if you sent your check to AFSCME instead of AMRPE. We will be contacting you again, as we need your membership and your dues to help fight the GABA lawsuit!

## Send In Your Contribution TODAY!

### It's Time to Fight Back

Your AMRPE Board of Directors has voted to pursue litigation against the State of Montana over the Guaranteed Annual Benefit Adjustment reduction included in HB 454. The reduction harms and places the brunt of the pension fix on the backs of PERS retirees. We feel this is a direct violation of our "Contract Rights" specified in Montana Law, 19-2-502(2) MCA which states:

"Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership."

***Litigation is expensive, and we need your help. Enclosed with this newsletter is a Donation Envelope that can be used to mail in any contribution you can afford. You can also donate at our website [www.amrpe.org](http://www.amrpe.org), which will connect you directly to Pay Pal. Any size donation will be welcome and will be used specifically toward defending your rights as a Montana Public Employee retiree. We all have much to lose over this revision to our retirement.***



ASSOCIATION OF MONTANA  
RETIRED PUBLIC EMPLOYEES

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**Help Us Fight For Your Guaranteed Annual Benefit Adjustment**

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| City, State, Zip | City     | State         | Zip  |
| Telephone        | (      ) | <b>E-Mail</b> |      |