



Winter 2014

## Association of Montana Retired Public Employees

P.O. Box 4721, Helena, MT 59604-4721

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

Contact via email: [info@amrpe.org](mailto:info@amrpe.org)

### OFFICERS & BOARD OF DIRECTORS

|                                  |              |            |
|----------------------------------|--------------|------------|
| Rusty Wrigg, President           | 406-443-7861 | Helena, MT |
| Cathy Kendall, Vice-President    | 406-442-1564 | Helena, MT |
| Jan Brown, Secretary             | 406-443-3824 | Helena, MT |
| John McEwen, Treasurer           | 406-449-8947 | Helena, MT |
| James Christnacht                | 406-443-5291 | Helena, MT |
| Mike O'Connor                    | 406-442-3396 | Helena, MT |
| Lyle Manley                      | 406-449-7011 | Helena, MT |
| Dale Boespflug                   | 406-439-3007 | Helena, MT |
| Jim Lewis                        | 406-449-6641 | Helena, MT |
| Jackie Tunis, Member Coordinator | 406-438-3710 | Helena, MT |

PHONE NUMBER: 406-438-3710 (leave message please)

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

## Message From the President

by Russell Wrigg, President

From the opening bell of the 2013 Legislature until the last day of the year your AMRPE Board has been very busy. Of course during the session we attended and testified at many committee hearings on proposed legislation that had the potential to affect you as PERS retirees. Our focus was primarily on trying to keep any benefit reduction out of the so-called "Pension Fix" bill, HB 454. In the eleventh hour of the session the legislature chose to insert Section 5 into HB 454 that would potentially reduce our GABA to 1% beginning in January 2014. Subsequent to the governor signing HB 454 your board voted to pursue litigation to stop the GABA reduction from being implemented. We obtained the services of Leo Berry and his firm Browning, Kaleczyc, Berry and Hoven (BKBH). You can read more about the progress of the lawsuit and the injunction request in their article elsewhere in this newsletter.

My focus in this message is to continue to plead for adequate funds to continue our litigation. Although we have increased our membership dramatically and have received nearly \$40,000 in donations for the litigation, our legal expenses are greater than that amount. We expect needing another \$75,000 to carry litigation through the district court level.

Currently there are about 20,000 PERS retirees; our membership is only about 2,650; we have received direct donations for the litigation fund from only 690 of our members. We need better participation, both from our members and all PERS retirees, in order to continue. We were successful in our injunction request to temporarily halt the implementation of the GABA reduction from 3% to 1%. All members received their full 3% GABA in January. I am asking that all members try to give a little more. I suggest that you figure how much the 2% reduction would have meant to your monthly gross amount and contribute at least one month's worth. For example: the average PERS retirement benefit is \$1,100.00/month, 2% of that is \$22.00. If we could average that \$22.00 contribution over our membership, we could raise over \$55,000.00. I realize that some retirees will feel the pinch by contributing, but consider the consequences if we are not successful and that 2% is lost. Membership dues are not enough. Membership dues are used almost entirely on lobbying and day-to-day operations of AMRPE.

**Included with this newsletter is either an envelope for dues with an option to add a donation, or an envelope strictly for donations because your dues are current. Please make a donation!**

*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)



**BROWNING KALECZYC  
BERRY & HOVEN P.C.**  
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## **The Lawsuit to Protect your GABA Update**

**By Leo Berry and Jessie Luther**

HB 454 was introduced to address the funding shortfall in PERS by raising contributions by active employees and the employers. Late in the Session the Legislature amended House Bill 454 to dramatically reduce the annual increase paid on PERS retirees' pension benefits. The amendment cut the Guaranteed Annual Benefit Adjustment ("GABA") for current retirees in half from 3% to 1.5%, and then further reduced the GABA based on the actuarial valuation of the system, reducing it to 1% effective January 1, 2014. Due to this dramatic reduction to the annual increase relied on by several retirees, your Association made a decision to file a lawsuit challenging the decrease in the GABA as unconstitutional. AMRPE sought volunteers to appear as individual co-plaintiffs with the Association in the challenge. AMRPE engaged Browning, Kaleczyc, Berry & Hoven, P.C., the same firm that represents the Association legislatively, to represent it in this litigation.

AMRPE filed its complaint against the State of Montana, the Montana Public Employee Retirement Administration, the Montana Public Employee Retirement Board, and Governor Bullock (hereafter collectively "State") in State District Court in Lewis and Clark County on October 30, 2013. The complaint alleged that the Legislature's reduction to the GABA was an unconstitutional impairment of the retirees' constitutionally protected contract rights and a taking of private property under both the state constitution and the federal constitution. Concurrently, AMRPE filed a motion and brief for a preliminary injunction to prevent the State from implementing the GABA reduction and to ensure that on January 1, 2014, all retirees would continue to receive GABA at the same rate received prior to the enactment of HB 454. AMRPE argued that the retirement benefits received by public employees are protected by contract, as provided in the statutes that exist at the date of hire, through employment to the time of retirement. The statute specifically provides that these protected retirement benefits may be enhanced by the Legislature, but is silent as to whether the Legislature may reduce the benefits. Based on case law from around the nation, the Association argued that the general rule is retirement benefits cannot be reduced unless a corresponding enhancement replaces the value lost. Because the GABA was reduced without any corresponding enhancement, AMRPE argued it is an unconstitutional impairment of contract and the provision should not be enforced.

The State responded, arguing the law was a constitutional exercise of the State's power and served the important public purpose of making PERS actuarially sound as required by the Montana Constitution. The State further argued that the Legislature specifically applied the GABA reduction to individuals who are already retired and were justified in doing so because the financial crisis facing the retirement systems constituted an emergency which necessitated reducing the GABA to bring PERS back to actuarial soundness. The State also suggested that public retirees should be more willing than non-public employees to live with a reduction in their retirement benefits as a sacrifice for the benefit of the public as a whole. AMRPE replied to these arguments arguing that the State was legally incorrect and that as a practical and legal matter the State of Montana should be required to keep the bargain it made with its retired employees and pay the promised GABA.

Oral argument was held on December 12, 2013 in front of Judge James Reynolds. AMRPE requested a ruling prior to January 1, 2014 so the administration would be certain of which GABA was to be used in calculating retirement benefits. Judge Reynolds granted a preliminary injunction in favor of AMRPE and the individual retirees enjoining the State from enforcing the amendments which reduced the GABA in HB 454. The State was further ordered to pay all eligible PERS retirees the 3% or 1.5% GABA for which they qualified prior to the passage of HB 454.

(continued on next page)

## **The Lawsuit to Protect your GABA Update (cont.)**

The injunction and order will remain in effect until the merits of the case are fully decided on yet to be filed motions or at trial. The legal team of Leo Berry, Chad Adams and Jessie Luther will now start preparing for the next phase of the process which is moving toward a trial. The time frame for a final court determination is uncertain but we are going to try to move the case to completion as soon as we can. While the injunction was granted in AMRPE's favor, a final ruling in our favor on the merits is not guaranteed as the standards for a declaration of unconstitutionality and issuance of a permanent injunction are different. AMRPE is hopeful that the court will, after all the facts are presented to it, continue to find that Montana is required to keep its promised bargain with its public employee retirees.

## **Send In Your Contribution TODAY!**

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 burden 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, MCA 19-2-502 (2) 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 continue to need your help. The temporary injunction was just the first step in a long process. Still in front of us is the trial phase and possibly appeals.

Enclosed with this newsletter is an envelope that can be used to mail in your contribution. You can also donate by credit card at our website, [www.amrpe.org](http://www.amrpe.org), which will connect you directly to PayPal. 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 benefits.

## **AMRPE Membership Dues -Time To Renew**

If you are a member and your membership is due, an envelope to mail in renewals is enclosed. You may also pay with a credit card online using Pay Pal at [www.amrpe.org](http://www.amrpe.org). If no dues envelope is enclosed you are current, but please use the donation envelope!

Our largest expenses are legal advice and lobbying by Leo Berry and staff from BKBH. Fundraising activities and member recruiting, renewals, and communication account for other expenses.

# AMPRE BOARD ELECTS NEW MEMBERS

New Board Members were elected in Sept. & Dec. 2013 to replace Carolyn Knuckles, Barb Anderson and Bill Palmer. Many thanks to them for their service and dedication.



**Lyle Manley** of Helena retired from the Montana Department of Transportation in 2009 after 20 years of employment in their Legal Division. He retired with a little over 30 years as a member of the PERS.

Prior to MDOT he worked for the Department of State Lands, the State Supreme Court and the Governor's Budget Office. He is on the board of a local credit union. In retirement he enjoys going to Griz games and brewing beer at home.



**Dale Boespflug** of Havre and Holter Lake retired from the Department of Public Health and Human Services as a regional administrator in 2000, after a little over 31 years of enrollment in the PERS.

After retirement he worked as a chief executive officer for a non-profit in Havre that manages programming and training for adults with development disabilities. He was responsible for 70 employees and a budget over 3 million dollars. He retired from this position after 10 years.



**Jim Lewis** retired from the MDOT after 34 years of public service. Jim spent 29 years with the MDOT Legal Division as an attorney. He and his family have made Helena their home throughout his career and in retirement.

He has been active on various boards and committees while in public service and in retirement. He has demonstrated a willingness and enthusiasm for volunteering with groups such as the Helena Outdoor Club, the Continental Divide Trail Alliance and the Glacier Park and Bob Marshall Wilderness Foundations.

## **NEW VOLUNTEERS BRING A WEALTH OF EXPERIENCE, FRESH IDEAS AND A PASSION FOR PROTECTING RETIREES' RIGHTS AND BENEFITS TO THE AMPRE BOARD**

**You are invited to attend any of our board meetings in Helena. They are on the 3rd Tuesday of the month from 9:30-11:30 A.M. Our meetings are temporarily held in the conference room of Valley Bank at 321 Fuller Avenue in Helena. When renovations are finished, we will meet again in the MPERA board room at 100 North Park Ave. We do not meet in June, July or August. Please come and participate in your retirement organization. Please check our website for meeting location updates.**

## **AMPRE Growth and Change by Cathy Kendall**

AMRPE welcomes 850 new members. During 2013 we conducted a major membership campaign to increase active interest in the association. We now have close to 2,650 members. This is a major step in financing the Guaranteed Annual Benefit Adjustment (GABA) lawsuit and gives us additional clout when lobbying on retirement issues before the legislature. There is still opportunity to grow. There are about 20,000 PERS retirees. Please contact and encourage your retired friends to join the association! They can join through our website, [www.amrpe.org](http://www.amrpe.org) or call 406-438-3710 and a membership application will be sent to them.

A significant change to AMRPE is the hiring of a new administrative services contractor. Martha Vogt, our contractor for the past six years, decided to retire - again! Many thanks to Martha for the fine work she did in handling member recruitment, renewal and communication. The new contractors from Communication and Management Services Inc. (CMS) are Consultant Dan McGoldrick and Membership Coordinator Jackie Tunis. CMS is a Helena firm that provides services to a wide range of public and private sector organizations. They can be reached during normal business hours at 406-438-3710.

Three board members left the board this past year, Bill Palmer, Barbara Anderson and Carolyn Knuckles. Bill and Barbara served for three years and Carolyn served six, including three years as vice president. New board members include Dale Boespflug, Lyle Manley and Jim Lewis. Cathy Kendall will serve as vice president. See the bio's of the new members elsewhere in this newsletter.

Our bylaws committee was busy this past year. Bylaw changes approved at the December meeting include term limits for board members. Board members will now be elected for three-year staggered terms. The fresh ideas and enthusiasm new members bring to the board will ensure that actions are well grounded and correctly reflect the tenor of the membership. With this change, opportunities for direct involvement will increase and hopefully encourage interest in serving as part of the association leadership.

The AMRPE website and newsletters keep members apprised not only of activities and issues affecting the membership, but also of openings for board positions. What a great opportunity for you to advocate for the preservation of your benefits as a retired public employee.

## **Health Plan Tidbits by John McEwen**

Health plans offered under the Affordable Care Act may be an alternative to staying on your employer-sponsored plan for pre-Medicare retirees. Enrollment must be completed by March 31, 2014. If you are interested and want to learn more go to the health plan marketplace at <http://www.healthcare.gov>.

Remember, pre-Medicare retirees who are on the state health plan can use the full range of services offered by the Montana Health Center, the clinics for employees located in Helena, Billings and Miles City. All retirees on the plan can use the clinics for immunizations and for the health screening benefit.

All plan members can receive a premium discount by participating in a health screening and a health risk assessment. Health screenings are available statewide, See details at <http://www.benefits.mt.gov> regarding locations and times and to make an appointment.

Please visit our website, [www.amrpe.org](http://www.amrpe.org) for the following:

- ◆ Renew or update your membership on-line securely using Pay Pal or credit card
- ◆ Newsletters and Minutes from the last two years, links to recent legal suit articles in the media

If you know of other retirees that are NOT members, please email us their name and address at [info@amrpe.org](mailto:info@amrpe.org) so that we can offer them a membership or direct them to our website where they can discover what we're all about, become members and donate to a cause that's in their best interest.



RETURN SERVICE REQUESTED

ASSOCIATION OF MONTANA  
RETIRED PUBLIC EMPLOYEES

P.O. Box 4721  
Helena, MT 59604-4721

Info Phone: 406-438-3710  
E-mail: [info@amrpe.org](mailto:info@amrpe.org)

**PERA retirees working for  
PERA retiree benefits**

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**We're on the Web at:**

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

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**Please Use The Envelope Enclosed To Make A Donation To The  
Legal Fund!  
Help Us Fight For Your Guaranteed Annual Benefit Adjustment**

*Change of Address Form*

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|------------------|---------|---------------|------|
| Name             | First   | MI            | Last |
| New address      |         |               |      |
| City, State, Zip | City    | State         | Zip  |
| Telephone        | (     ) | <b>E-Mail</b> |      |