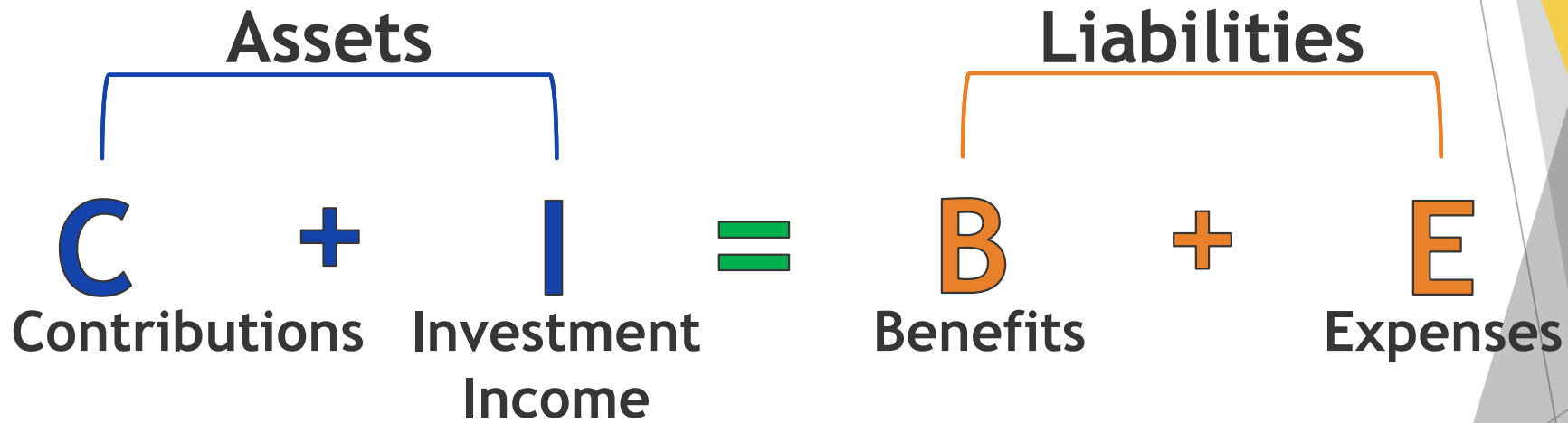


The Foundation Formula for Oversight



Missouri Department of Transportation and Highway Patrol Employees' Retirement System



Benefit Provisions & Legal Matters

**Greta Bassett-Seymour, Assistant
Executive Director & General Counsel**

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Benefit Provisions Are Based in Statute

- ▶ Benefit provisions are found in Chapter 104, RSMo
- ▶ Benefits may be further defined in Board Rules

Current Membership

As of June 30, 2020

- ▶ 18,660 total members
- ▶ 7,335 active members
- ▶ 9,226 retirees/survivors
- ▶ 138 disability recipients
- ▶ 2,099 vested former members



Three Primary Sources of Retirement Income for Members

- ▶ MPERS benefit
 - ❖ With 30 years of service, benefit could possibly replace over 50% of pre-retirement income
- ▶ Voluntary participation in the state-sponsored deferred compensation plan (MO Deferred Comp)
 - ❖ Since July 1, 2012 enrollment for new hires is automatic, (1% of pay), but employee may opt out
- ▶ Social security benefits
 - ❖ The Social Security Administration estimates that the average wage earner will replace about 40% of his/her salary with social security benefits.

State Retirement Policy

- ▶ Closed Plan's purpose was to provide a reasonable pension
- ▶ Year 2000 Plan's purpose:
 - ❖ Replace a plan that had some expensive and special interest provisions:
 - ▶ Free 50% survivor benefit (no reduction to retiree benefit)
 - ▶ Special consultant language
 - ❖ Reduce turnover among younger employees (the goal for a career employee was 30 years of service)
 - ❖ Allow/encourage retirement *before* social security eligibility to:
 - ▶ Provide opportunities for promotion
 - ▶ Reduce payroll costs
 - ▶ Refresh workforce
 - ❖ Provide for all dependents in the event of a duty-related death
 - ❖ Facilitate mobility for local to state employment for recruitment purposes
- ▶ 2011 Tier's purpose was to reduce costs subsequent to the Great Recession

MPERS Retirement Plans

- ▶ The Year 2000 Plan is for those hired for the first time on or after July 1, 2000, but prior to January 1, 2011.
- ▶ The 2011 Tier is the current benefit structure for anyone hired for the first time after January 1, 2011.
- ▶ The Closed Plan is still applicable to active members and retirees (but not new employees).

Plan Provisions and Employee Contributions

▶ Defined Benefit, Non-Contributory Plan

- ❖ Closed Plan and Year 2000 Plan funded by **employer** contributions and earnings on investments

▶ Defined Benefit, Contributory Plan

- ❖ 2011 Tier funded by **employee** contribution of 4% of pay, **employer** contributions, and earnings on investments
- ❖ 2011 Tier is the result of benefit reform legislation (HB 1, 2010) following the Great Recession

Comparison to Other State Plans

Why bother comparing?

State law dictates the plan structure and what is to be provided to the members. As trustees, you are charged with implementing the retirement plan as prescribed by the state legislature.

It is important to know how the plan provisions at MPERS compare with benefit provisions at other public pension plans in the country.

Comparison to Other State Plans

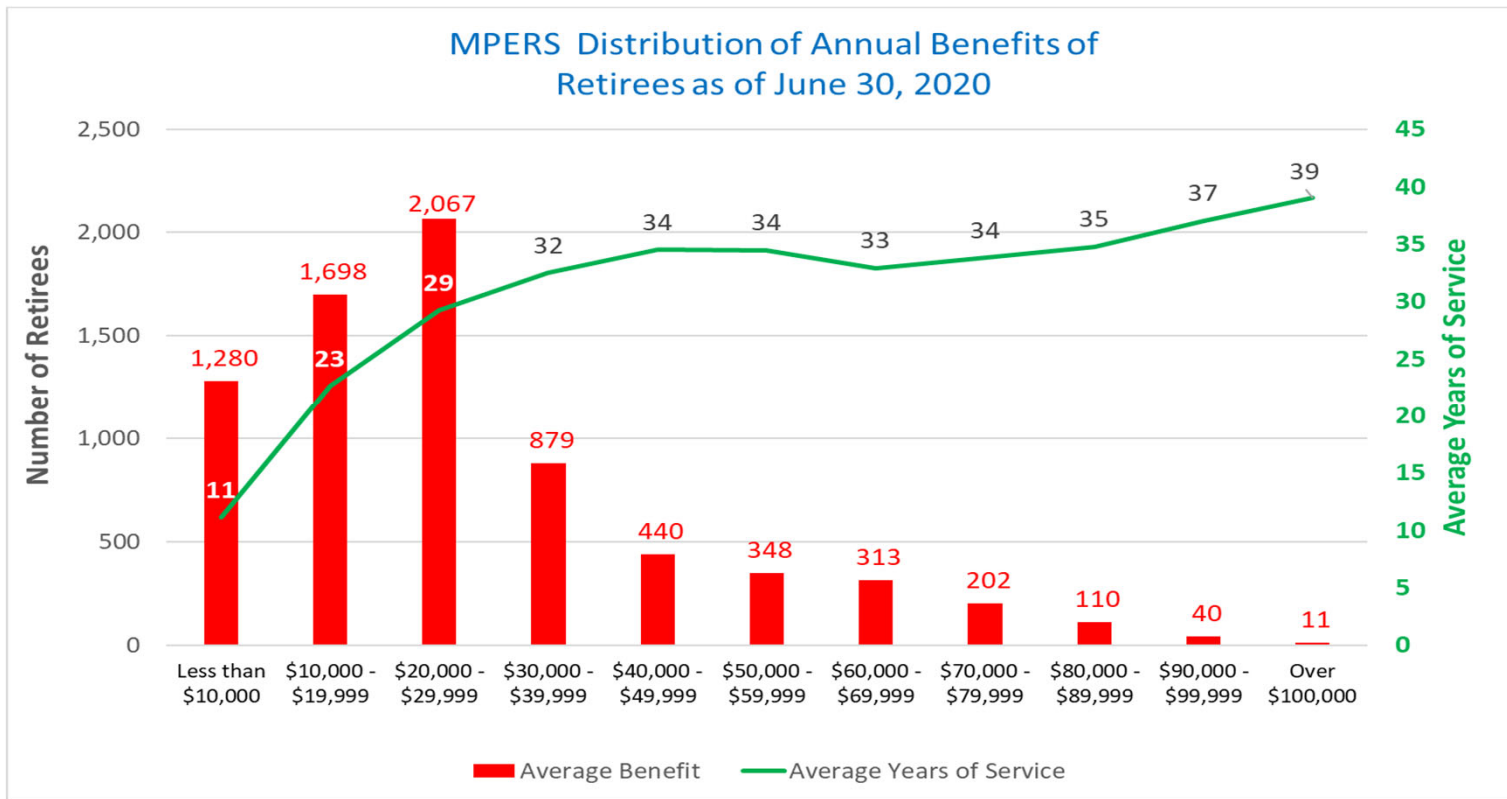
- ▶ We use a comparative study of 87 major public employee retirement systems as prepared by the Wisconsin Legislative Council, mostly recently in 2019 (with 2017-18 data).
- ▶ In summary, MPERS benefits are in line with other pension plans included in the survey.

Source: http://docs.legis.wisconsin.gov/misc/lc/comparative_retirement_study/

Comparison to Other State Plans

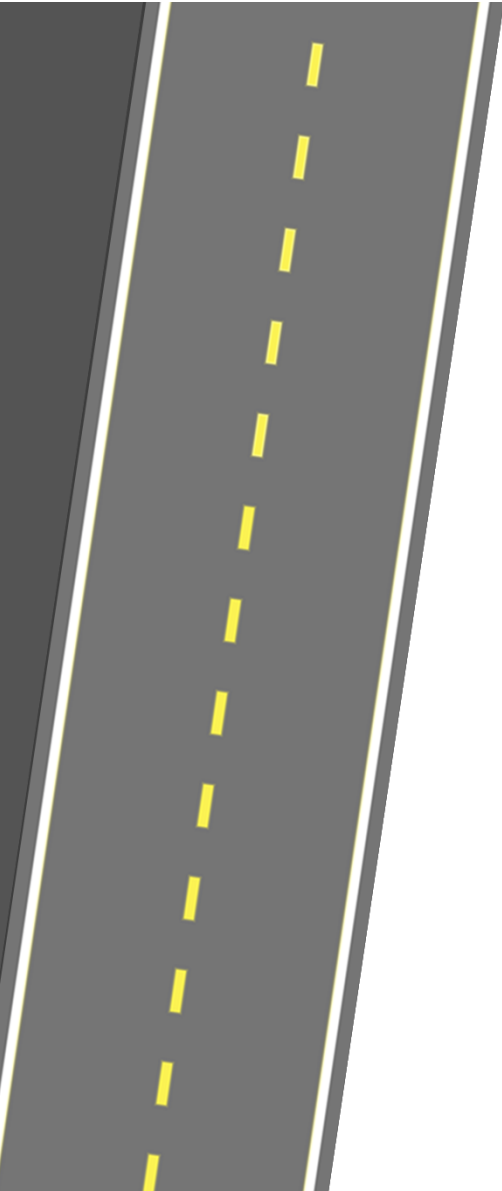
Category	MPERS	Other Plans
Employee Contributions	4% for 2011 Tier	5% or less - 29 plans >5% - 56 plans
Vesting	5 years	4 or 5 years - 42 plans < 4 years - 14 plans > 5 years - 35 plans
Final Average Pay	3 years	3 years - 23 plans 5 years - 45 plans
Multiplier	1.6% or 1.7%	1.5 to 2.1% - 44 plans >2.1% - 12 plans
COLA	80% of CPI-U	Use CPI - 34 plans Use ad hoc - 22 plans Use investment earnings - 4 plans

Reasonable Level of Benefits



Reasonable Level of Benefits - Takeaways

- ▶ The average new retiree receives \$27,462 on an annual basis and has 26 years of service.
- ▶ About 80% of all retirees receive less than \$40,000 per year.
- ▶ About 2% of all retirees receive \$80,000 or more per year.



Benefit Formula and Other Calculations

Benefit Formula

▶ Set by Legislature

▶ Final Average Pay

▶ Multiplier

❖ 1.6% Closed Plan

❖ 1.7% Year 2000 Plan and 2011 Tier

▶ Creditable Service

Benefit Payment Options

- ▶ Life Income Annuity
- ▶ Joint & 50% Survivor
- ▶ Joint & 100% Survivor
- ▶ Life Income with 60 Guaranteed Payments (Closed Plan)
- ▶ Life Income with 120 Guaranteed Payments
- ▶ Life Income with 180 Guaranteed Payments

Note: The guaranteed payment option does not end after the guaranteed period is up if the retiree is still alive, it is payable until the member's death.

BackDROP

- ▶ BackDROP should be thought of as a payment option, not as an additional or different kind of benefit
- ▶ Must work at least two years beyond date first eligible for normal retirement
- ▶ Benefit calculated as of BackDROP date including final average pay and service
- ▶ Lump sum payment equal to 90% of what the member would have received, had he/she retired on the BackDROP date
- ▶ BackDROP is not available in the 2011 Tier

Disability Benefits

- ▶ Long-Term Disability
- ▶ Work-Related Disability

Questions?

Fiduciary Duty & Legal Considerations

- ▶ MPERS' Board of Trustees oversees the general administration of the System.
- ▶ Trustees exercise discretion independently, but the governance of the System is vested in the Board as a body, not in any individual trustee.
- ▶ Through powers vested by statute (some expressly stated and some implied), the Board has established its own governance policies and rules for administration of the System.
- ▶ Legal liability for the breach of a duty or a violation of a law can fall on the System, the Board or individual trustees, depending on the circumstances of the breach, but liability does not typically extend to personal liability.

Powers of the Board

- ▶ In general, there are five powers of the Board, which are either vested in statute (legislation) or established through the Board's governance policies. A trustee should execute fiduciary duties when doing any of the following:
 - ▶ Conducting the business of the Board
 - ▶ Setting direction and policy and prudently delegate
 - ▶ Approving key decisions
 - ▶ Overseeing and reporting
 - ▶ Obtaining independent advice and verification

A Note About Liability & Applicable Case Law

- ▶ Fiduciary duty is not often challenged in court.
- ▶ There are only two cases in Missouri.
- ▶ A 20-year old LAGERS case held that the fiduciary must act reasonably and the scope in this case was very narrow; how to advise members in making an election.
- ▶ A 17-year old PEERS case held that the system had a duty to be sure all potential members were receiving benefits and they must act in the best interest of the members. In this case, bus drivers working part-time were not receiving service credit, but should have been.
- ▶ Bottom line, the legal duties of a trustee are significant, but law interpreting those duties is very limited.

Mitigating Legal Risk

- ▶ A trustee mitigates personal legal risk by devoting sufficient time to carry out the duties and responsibilities effectively.
- ▶ Statute requires six hours for new trustees and six hours annually thereafter. (Section 105.666 and Education & Orientation Policy.)
- ▶ Should not limit learning to only those hours required by statute and policy.
- ▶ Being prepared for meetings and asking questions of the System's fiduciaries and staff will mitigate legal risk.
- ▶ Governance policies encourage the Board to speak in one voice.
- ▶ MPERS' trustees are entrusted with caring for the property of others and operate under some of the highest legal duties.

Fiduciary Duties, in General

- ▶ General principals of fiduciary duty have developed out of trust law and the Uniform Trust Code, which has been adopted in Missouri.
- ▶ Two “big picture” duties:
 - ▶ Duty of care
 - ▶ Duty of loyalty
- ▶ Trustees should administer the System in good faith and in a reasonable manner.
- ▶ Act on an informed basis – educate yourself, ask questions, analyze, do not defer to others around you, obtain expert advice.
- ▶ Avoid conflict of interest (duty of loyalty).
- ▶ Follow and enforce the System’s statutes.

Fiduciary Duties, in General

- ▶ Administer the System in the best interests of the System's members (duty of loyalty).
 - ▶ All of the members' interests may not be the same – actives vs. retirees.
- ▶ Act impartially as to all members (duty of loyalty), i.e., treat similarly situated members equally.
- ▶ Be prudent and use reasonable care, skill and caution (prudent man rule, duty of care)
- ▶ Take reasonable steps to protect the System's assets, preserve assets (duty of care).
- ▶ Take reasonable steps to enforce claims of the System and to defend claims against the System. Always ask yourself, am I/are we acting reasonably? (duty of care)

Fiduciary Duties and Delegation

- ▶ Delegate duties to others when prudent (duty to delegate when it would be unreasonable to make the decisions yourself).
 - ▶ But maintain oversight – not absolved from responsibility.
 - ▶ While the Board employs staff and delegates authority to staff to make decisions on behalf of the System, all staff decisions are subject to review and modification by the Board because the Board has the ultimate authority and responsibility to make final decisions on behalf of the System.
- ▶ Missouri's trust statutes authorize/direct trustees to delegate to an agent, duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances.
 - ▶ Trustee shall exercise reasonableness in selecting an agent, establishing scope of the delegation and periodically reviewing the agent's actions.

When There Are Competing Considerations

- ▶ There is not always one right decision.
- ▶ When evaluating an issue, the Board may face competing considerations and there may not necessarily be one correct way to resolve an issue.
- ▶ There may be multiple (and potentially conflicting) ways for resolving the issue that are reasonable and consistent with the Board's fiduciary duty.
- ▶ In the end, the Board fulfills its duty so long as it makes an informed judgement about an issue in good faith and free of any conflict of interest.
- ▶ The Board generally has an obligation to enforce the MPERS statutes as written.

Funding of MPERS

- ▶ Duty to provide for adequate funding of the System.
- ▶ Follow the System's statutes for determining and certifying the contribution rate (Chapters 104 and 105) plus governance policy regarding the funding policies.
- ▶ In cooperation with the System's actuary, arrive at appropriate assumptions to determine the contribution rate to adequately fund the System.
- ▶ Act in consultation with the actuary and other hired experts as appropriate.
- ▶ In the event employers balk or if budgets do not allow for full contributions to be made, the System can sue the employer to fund appropriately and as required by law.

Investments of MPERS

- ▶ Ensure that the System's assets are invested properly and prudently.
- ▶ Diversify the investment portfolio.
- ▶ Balance risk and return – not too risky or conservative.
- ▶ Act in consultation with staff and consultants with expertise in institutional investing.
 - ▶ Collaborate and work as a team to figure out the answers.
 - ▶ Without adequate returns, the employers will have to pay higher contributions.
 - ▶ Bigger advantages in the market for institutional investors – opportunities that are not available for individual investors.
 - ▶ Institutional investing requires a more sophisticated knowledgebase, hence the need to delegate some responsibility to experts.

Standard of Care for Investment Fiduciaries

- ▶ “Investment Fiduciary” is defined as a person who exercises any discretionary authority or control in the investment of a public employee retirement system’s assets... Section 105.687.
- ▶ Standard of care for these fiduciaries is the “prudent investor” standard, as directed by the Prudent Investor Act ([Chapter 469](#)).
 - ▶ Prudence should be measured on an overall portfolio basis rather than by consideration of specific investments.
 - ▶ The nature or types of investments in which a system’s assets may be invested is defined or limited by statute or board policy.

Delegation of Fiduciary Duties at MPERS

- ▶ A trustee has a duty to perform responsibilities except when a prudent person of comparable skill might delegate those responsibilities to others.
- ▶ Through the Investment Policy and CIO Charter and ED Charter, the Board has delegated the implementation of the investment portfolio to the CIO, the executive director and the System's investment consultants.
- ▶ In accordance with the board planning calendar and governance policies, the Board monitors System compliance via staff and consultant reporting. Examples include:
 - ▶ Evaluation and selection of investment managers
 - ▶ Annual due diligence compliance
 - ▶ Quarterly performance reporting
 - ▶ Fees paid to managers
- ▶ Delegation does not remove the fiduciary duty to reasonably oversee System administration.

Correcting Errors Made by MPERS

- ▶ When an error occurs, the System's statutes direct the Board to correct the error and make up any underpayments or recover any overpayments by making actuarial adjustments to future benefit payments.
 - ▶ Corrections are limited to errors discovered within 10 years after the initial date of error.
- ▶ In exercising its fiduciary duty, the Board may also consider the costs and risks of potential litigation by a dissatisfied member.
 - ▶ Litigation expenses for the System
 - ▶ Headline risk for the System
 - ▶ Spurring additional litigation against the System (ancillary legal issues)
- ▶ The Board must pursue a reasonable course of action in terms of the System's interests.
- ▶ The Board should consider precedential effect.

Trustees With Dual Roles

- ▶ Several trustees provide service in the executive or legislative branches.
- ▶ While acting in their roles as trustees, their fiduciary duty is owed to the System's members and must act in the best interests of the System's members.
- ▶ When acting in their other roles, they have a duty to act in the best interests of the citizenry of Missouri.
 - ▶ They may take actions they believe are authorized by Missouri law, even if the actions are adverse to the interests of the System's members.
 - ▶ While acting as trustees, they may want to recuse themselves from Board deliberations and decisions as to actions taken by them in their other roles if the actions are adverse to the interests of the System's members.

Personal Liability

- ▶ Trustees are unlikely to incur personal liability for damages for any breach of fiduciary duty.
- ▶ Trustees should be protected by
 - ▶ Doctrine of official immunity
 - ▶ State legal expense fund
 - ▶ System's self-insurance
- ▶ If a trustee commits bad acts, he could be removed, sued personally, there could be reputational risk, but individually in his capacity as a trustee will not likely be liable.
 - ▶ No Missouri law on this issue, but official immunity should be a protection if acting in a discretionary capacity.

The Sunshine Law

- ▶ MPERS is subject to Missouri's Sunshine Law
- ▶ When in doubt, a meeting or a record is open to the public
- ▶ The Sunshine Law allows a public body to close meetings and records, but it almost never requires a public body to do so.
- ▶ Meetings can only be closed as expressly stated by exclusion in Chapter 610
- ▶ As it pertains to our System's records specifically, the vast majority are open records. Closed records include all member records (exclusive of a few discreet data points), portions of personnel records, and nearly all investment management contracts.

Board Meeting Protocol

- ▶ Board meetings are governed by Robert's Rules of Order.
- ▶ General counsel is the de facto parliamentarian for the board.
- ▶ Questions about board procedures can generally be directed to counsel for clarification.
- ▶ Agenda governs the content of the meeting.
- ▶ Minutes are brief and state what actions were taken and the outcomes.
- ▶ Staff provides a board meeting summary to members following the meeting.
- ▶ Discussion shall be germane to the agenda item/motion, respectful and shall not be repetitive.

Questions?