

**TEACHER RETIREMENT SYSTEM OF TEXAS MEETING
BOARD OF TRUSTEES
AND
POLICY COMMITTEE**

(Mr. Colonna, Chairman; Mr. Barth; Ms. Clifton; Mr. Kelly; & Mr. McDonald, Committee Members)

AGENDA

**April 18, 2013 – 12:15 p.m.
TRS East Building, 5th Floor, Boardroom**

1. Consider the approval of the proposed minutes of the December 13, 2012 committee meeting – Joe Colonna.
2. Review, discuss, and consider recommending to the Board amendments to the Resolution Designating Persons Authorized to Approve and Sign Vouchers – Don Green.
3. Discuss and consider recommending to the Board final adoption of proposed amendments to the following TRS rules in Title 34 of the Texas Administrative Code:
 - A. Chapter 23 (Administrative Procedures) – Tim Wei:
 - i. Rule § 23.7, relating to the Code of Ethics for Consultants; and
 - ii. Rule § 23.8, relating to the Expenditure Reporting by Consultants, Agents, Financial Advisors, Financial Services Providers, and Brokers.
 - B. Chapter 25 (Membership Credit) – Rebecca Smith:
 - i. Rule § 25.1, relating to Full-time Service;
 - ii. Rule § 25.6, relating to Part-time or Temporary Employment;
 - iii. Rule § 25.21, relating to Compensation Subject to Deposit and Credit;
 - iv. Rule § 25.43, relating to Cost for Unreported Service or Compensation;
 - v. Rule § 25.47, relating to Deadline for Verification; and
 - vi. Rule § 25.81, relating to Out-of-State Service Eligible for Credit.
 - C. Chapter 31 (Employment After Retirement) – Rebecca Smith:

- i. Rule § 31.14, relating to One-half Time Employment; and
 - ii. Rule § 31.41, relating to Return to Work Employer Pension Surcharge.
- D. Rule § 41.4, relating to the Employer Health Benefit Surcharge of Subchapter A, Retiree Health Care Benefits (TRS-Care) of Chapter 41, Health Care and Insurance Programs – Rebecca Smith.
- E. Rule § 47.10, relating to Determination of Whether an Order is a Qualified Domestic Relations Order of Chapter 47, Qualified Domestic Relations Orders – Rebecca Smith.

NOTE: The Board of Trustees (Board) of the Teacher Retirement System of Texas will not consider or act upon any item before the Policy Committee (Committee) at this meeting of the Committee. This meeting is not a regular meeting of the Board. However, because the full Policy Committee constitutes a quorum of the Board, the meeting of the Committee is also being posted as a meeting of the Board out of an abundance of caution.

Tab 1

Minutes of the Policy Committee
December 13, 2012

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on December 13, 2012, in the boardroom on the Fifth Floor of the East Building of TRS offices located at 1000 Red River Street, Austin, Texas 78701. The following committee members were present:

Joe Colonna, Chair
Todd Barth
Charlotte Clifton
David Kelly
Eric McDonald

A quorum of the committee was present.

Others present:

Karen Charleston, TRS Trustee
Chris Moss, TRS Trustee
Anita Palmer, TRS Trustee
Nanette Sissney, TRS Trustee
Brian Guthrie, TRS
Ken Welch, TRS
Dennis Gold, TRS
Amy Barrett, TRS
Marianne Woods Wiley, TRS
Dinah Arce, TRS
Jase Auby, TRS
Mary Chang, TRS
Chris Cutler, TRS
Jan Engler, TRS
Edward Esquivel, TRS
Brian Gomolski, TRS
Tom Guerin, TRS
Clarke Howard, TRS
Bob Jordan, TRS

Dan Junell, TRS
Eric Lang, TRS
Lynn Lau, TRS
Rebecca Merrill, TRS
Kirsten Morgan, TRS
Hugh Ohn, TRS
Mike Rehling, TRS
David Veal, TRS
Charmaine Skillman, TRS
Rebecca Smith, TRS
Tim Wei, TRS
Dr. Keith Brown
Steven Huff, Reinhart Boerner Van Deuren, s.c.
Brady O'Connell, Hewitt EnnisKnupp
Steve Voss, Hewitt EnnisKnupp
Joe Newton, Gabriel Roeder Smith & Company
Tathata Lohachitkul, Albourne America
Ted Melina Raab, Texas American Federation of Teachers
Leroy DeHaven, Texas Retired Teachers Association

With a quorum of the committee present, Mr. Joe Colonna called the meeting to order at 10:50 a.m.

Mr. David Kelly participated in the committee meeting by telephone conference call pursuant to section 551.130 of the Texas Open Meetings Act (chapter 551 of the Texas Government Code), concerning participation by a TRS board member in a public meeting by telephone conference call.

Per Mr. Colonna's request, all committee members and staff sitting at the committee table identified themselves, in accordance with the protocol for telephone conferencing.

1. Consider the approval of the proposed minutes of the September 13, 2012 committee meeting – Committee Chair.

On a motion by Mr. Barth, seconded by Ms. Clifton, the committee approved the

proposed minutes of the September 13, 2012 meeting as presented.

- 2. Discuss and consider recommending to the Board final adoption of proposed amendments to the following TRS rules in Subchapter A, Retiree Health Care Benefits (TRS-Care), Chapter 41, Health Care and Insurance Programs of Title 34 of the Texas Administrative Code – Clarke Howard:**
 - A. Rule § 41.2, relating to additional enrollment opportunities;**
 - B. Rule § 41.5, relating to payment of contributions; and**
 - C. Rule § 41.7, relating to effective date of coverage.**

Mr. Howard summarized the proposed amendments to rule sections 41.2, 41.5 and 41.7 relating to the Retiree Health Care Benefits (TRS-Care). He said that the proposed amendments had been published in the *Texas Register* for more than 30 days, and TRS received no comments regarding them. Therefore, he said, staff recommended that the committee recommend to the board adoption of the proposed amendments.

Upon a motion by Ms. Clifton, seconded by Mr. McDonald, the committee unanimously voted to recommend to the board the adoption of rule sections 41.2, 41.5 and 41.7, as presented by staff and published in the *Texas Register*.

- 3. Discuss and consider authorizing for public comment publication in the *Texas Register* proposed amendments to the following TRS Rules in Title 34 of the Texas Administrative Code:**
 - A. Chapter 23 (Administrative Procedures) – Tim Wei:**
 - i. Rule § 23.7, relating to the Code of Ethics for Consultants; and**
 - ii. Rule § 23.8, relating to the Expenditure Reporting by Consultants, Agents, Financial Advisors, Financial Services Providers, and Brokers.**

Mr. Wei presented the proposed amendments to rule sections 23.7 and 23.8 relating to TRS Code of Ethics (Code) and its related documents. He stated that the proposed amendments would update the rules to reflect the current versions of the Code adopted by the board and the related memorandum from the executive director to contractors explaining reporting requirements under the Code. He noted a correction needed to the proposed amended rule text to reflect that the Expenditure Reporting Memorandum was last revised in December 2012 instead of March 2012.



B. Chapter 25 (Membership Credit) – Rebecca Smith:

- i. Rule § 25.1, relating to Full-time Service;**
- ii. Rule § 25.6, relating to Part-time or Temporary Employment;**
- iii. Rule § 25.21, relating to Compensation Subject to Deposit and Credit;**
- iv. Rule § 25.43, relating to Cost for Unreported Service or Compensation;**
- v. Rule § 25.47, relating to Deadline for Verification; and**
- vi. Rule § 25.81, relating to Out-of-State Service Eligible for Credit.**

Ms. Smith presented the proposed amendments to rule sections 25.1, 25.6, 25.21, 25.43, 25.47, and 25.81 relating to membership credit.

C. Chapter 31 (Employment After Retirement) – Rebecca Smith:

- i. Rule § 31.14, relating to One-half Time Employment; and**
- ii. Rule § 31.41, relating to Return to Work Employer Pension Surcharge.**

Ms. Smith presented the proposed amendments to rule sections 31.14 and 31.41 relating to employment after retirement.

D. Rule § 41.4, relating to the Employer Health Benefit Surcharge of Subchapter A, Retiree Health Care Benefits (TRS-Care) of Chapter 41, Health Care and Insurance Programs – Rebecca Smith.

Ms. Smith presented the proposed amendments to rule section 41.4 relating to the employer health benefit surcharge.

E. Rule § 47.10, relating to Determination of Whether an Order is a Qualified Domestic Relations Order of Chapter 47, Qualified Domestic Relations Orders – Rebecca Smith.

Ms. Smith presented the proposed amendments to rule section 47.10 relating to qualified domestic relations orders.

Ms. Smith explained for Mr. McDonald how staff communicated with the members' associations about proposed rules and considered members' opinions about them. She also confirmed for Mr. McDonald that the proposed changes to all the rules would either have a



positive or neutral effect on members in general. Ms. Smith agreed with Mr. Colonna that the proposed changes making the rules clear and consistent would be good for the members.

Mr. Colonna called for a motion. On a motion by Mr. Barth, seconded by Ms. Clifton, the committee unanimously voted to approve public comment publication of the proposed amendments to rule sections 23.7, 23.8, 25.1, 25.6, 25.21, 25.43, 25.47, 25.81, 31.14, 31.41, 41.4 and 47.10 as presented.

The meeting adjourned at 11:15 a.m.

Tab 2

**RESOLUTION
DESIGNATING PERSONS AUTHORIZED TO SIGN TRS VOUCHERS**

April 18, 2013

WHEREAS, In accordance with section 825.104 of the Texas Government Code, the Board of Trustees (the "Board") of the Teacher Retirement System of Texas ("TRS") has previously granted authority to certain persons to approve and sign vouchers for payment from accounts of TRS; and

WHEREAS, The Board desires to re-designate those persons to whom this authority has been granted and to add Janie Duarte as Assistant Manager of General Accounting and Budgeting as an additional authorized designee; now, therefore, be it

RESOLVED, That the Board designates the following persons to approve and sign vouchers for payment from accounts of TRS from and after April 18, 2013, and until the designated person separates from employment with TRS, is no longer employed in any capacity for which authority is granted under this resolution, or is not re-designated by the Board, whichever occurs first:

| | |
|------------------|---|
| Brian K. Guthrie | Executive Director |
| Ken Welch | Deputy Director |
| Don Green | Chief Financial Officer |
| Jamie Michels | Manager of General Accounting |
| Scot Leith | Manager of Investment Accounting |
| Janie Duarte | Assistant Manager of General Accounting & Budgeting |
| Cindy Haley | Team Leader of Financial Reporting |
| Martha Rivera | Team Leader of Employee Payroll & Benefits |
| Vicki Garcia | Team Leader of Investment Accounting |

ATTESTED:

Signed: _____

R. David Kelly, Board Chairman

Date: April 18, 2013

Signed: _____

Brian K. Guthrie, Executive Director

Date: April 18, 2013

Tab 3A



Memorandum

TO: Policy Committee and the Board of Trustees
From: Timothy Wei, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Dennis Gold, Interim General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects

Date: April 1, 2013

Re: Amendments to TRS Code of Ethics Rules §§ 23.7 & 23.8

REQUESTED ACTION

At the December 2012 meeting, the TRS Policy Committee authorized public-comment publication of proposed amendments to rules § 23.7, relating to the Code of Ethics for Contractors (“Code”), and § 23.8 relating to expenditure reporting by contractors. The proposed amendments update the rules to reflect the board’s most recent adoptions. The proposed amendments were published for public comment in the February 8, 2013 issue of the *Texas Register* (38 TexReg 633), and therefore were published at least thirty days before being considered for adoption. As of the date of this memorandum, TRS had received no comments on the proposed amendments, which are ready for adoption.

At the April 2013 meeting, the Policy Committee will consider recommending to the board the adoption of the proposed amendments to rules §§ 23.7 and 23.8.

WHY THE ACTION IS REQUESTED

The proposed amendments would update the rules to reflect the current versions of the Code adopted by the board and the related memorandum from the executive director to contractors explaining reporting requirements under the Code.

BACKGROUND OF THE REQUESTED ACTION

Rule § 23.7. Government Code § 825.212(e) requires the board to adopt by rule standards of conduct applicable to TRS consultants and advisors (contractors) who likely will be paid over \$10,000 in a year or who provide important investment advice. Rule § 23.7 adopts the Code by reference. In April 2012, the board adopted a revised Code. The proposed rule amendments update Rule 23.7 to reflect the current version of the Code. Other minor changes would clarify references to the revised Code and the terms used in it.

Rule § 23.8. Texas Government Code § 825.212(g) requires the board by rule to require consultants and advisors to the retirement system and brokers (contractors) to file with the system a report detailing any expenditure of more than \$50 made on behalf of a trustee or employee of the system. The board adopts the form used by contractors to report such expenditures. The executive director provides an explanatory memorandum addressed to contractors to accompany the reporting form. Rule § 23.8 adopts by reference the board's reporting form, the Expenditure Reporting Form for Contractors, and the executive director's memorandum, the Expenditure Reporting Memorandum. In September 2010, the board adopted a revised reporting form. In December 2012, the executive director approved a revised memorandum. The proposed amendments to rule § 23.8 would adopt by reference the latest version of the executive director's memorandum. Other minor changes clarify the reporting requirements for Contractors under the updated Code adopted by reference in rule § 23.7.

PROPOSED RULE TEXTS (showing changes)

§23.7. Code of Ethics for Contractors.

~~Any Consultant, Agent, Financial Advisor, or Financial Services Provider doing business with~~The Code of Ethics for Contractors (the Code) sets forth the ethical responsibilities and requirements of Contractors, as that term is defined in the Code, in performing services for the Teacher Retirement System of Texas (TRS), ~~or Broker approved to do business with TRS, must comply with TRS' Code of Ethics for Contractors (the Code of Ethics).~~ The Board of Trustees of TRS ~~(the board)~~ adopts by reference the Code of Ethics as most recently revised and adopted to be effective ~~September 17, 2010~~April 20, 2012. ~~Capitalized words appearing in this section have the same meaning assigned to them in the Code of Ethics.~~ A copy of the most recently revised Code of Ethics has been filed with the Office of the Secretary of State in Austin. Copies of the Code of Ethics are available from TRS at 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400. Also, a copy of the Code of Ethics can be found on and printed from the TRS website, www.trs.state.tx.us, in the information regarding TRS Ethics.

§23.8. Expenditure Reporting by ~~Consultants, Agents, Financial Advisors, Financial Services Providers, and Brokers~~Certain Contractors.

Under 23.7 of this title (relating to Code of Ethics for Contractors) and the Code of Ethics for Contractors (the Code) adopted by the Board of Trustees of the Teacher Retirement System of Texas (TRS), each Contractor, as that term is defined in the Code, must annually file an expenditure report on the prescribed TRS form. The Contractor must include in the report itemized, reasonably detailed lists of expenditures of more than \$50 per day made by or on

behalf of the Contractor with respect to or for the benefit of each TRS Trustee or Employee. Each Contractor must comply with TRS rules governing the filing of and requirements for the expenditure reporting form promulgated by TRS, including Consultants, Agents, Financial Advisors, and Financial Services Providers doing business with the Teacher Retirement System of Texas (TRS), and Brokers approved to do business with TRS, must report expenditures made of more than \$50 on behalf of any one trustee or employee of TRS and must file any other report required by the Code of Ethics for Contractors (Code of Ethics), which is adopted by reference in §23.7 of this title (relating to Code of Ethics for Contractors). The reports must be filed no later than April 15 of each year with the Executive Director and must comply with the Code of Ethics and the Expenditure Reporting Memorandum (reporting memorandum), and the Expenditure Reporting Form for Contractors (reporting form) as promulgated and applicable under the Code of Ethics for Contractors and revised from time to time. TRS adopts by reference the reporting memorandum as most recently revised ~~November 2, 2010~~ December 15, 2012 and the reporting form as most recently revised September 17, 2010. Capitalized words appearing in this section have the same meaning assigned to them in the Code of Ethics, as revised from time to time. Copies of the most recently revised reporting memorandum and reporting form have been filed with the Office of the Secretary of State in Austin. Copies of the reporting memorandum and the reporting form are available from TRS at 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400. Also, copies of the reporting memorandum and the reporting form can be found on and printed from the TRS website, www.trs.state.tx.us, in the information regarding TRS Ethics.

BOARD RESOLUTION

**Adopting Amended TRS Rule 34 Tex. Admin. Code § 23.7,
Relating to Code of Ethics for Contractors**

April 18-19, 2013

Whereas, Section 825.212(e) of the Texas Government Code requires the board to adopt by rule standards of conduct applicable to TRS consultants and advisors who may reasonably be expected to receive more than \$10,000 compensation from TRS for a fiscal year or who render important investment advice to TRS;

Whereas, The board previously adopted Rule § 23.7 to implement this requirement under section 825.212(e), which rule adopted by reference TRS' Code of Ethics for Contractors ("Code");

Whereas, In April 2012, the board adopted a revised Code;

Whereas, Staff has recommended amendments to Rule § 23.7 to adopt the April 2012 revisions to the Code;

Whereas, Pursuant to the authority granted by the policy committee at its December 2012 meeting, TRS published proposed amendments to Rule § 23.7 for public comment in the February 8, 2013 issue of the *Texas Register* (38 TexReg 633), and the public had at least 30 days' notice of TRS' intention to adopt the proposed amendments before the board considered their adoption, and TRS received no comments; and

Whereas, The Policy Committee has recommended that the board adopt the proposed amendments to Rule § 23.7 without changes to the text of the proposed rule as published in the *Texas Register*; now therefore, be it

Resolved, That the board hereby:

- 1) Adopts amended rule 34 TEX. ADMIN. CODE § 23.7, without changes to the text of the proposed rule as published in the February 8, 2013 issue of the *Texas Register* (38 TexReg 633);
- 2) Incorporates by reference into this Resolution, as though fully set out in it, the applicable policy committee and board meeting materials, discussions, and actions, including the approved rule text and reasoned justification for its adoption as presented in those meeting materials, discussions and actions;
- 3) Grants the TRS staff authority to prepare and to file all documents required by this Resolution, to work with the Office of the Secretary of State in preparing and filings such documents, and to make any technical changes required for publication of the adopted rule; and
- 4) Grants the board chairman authority to sign an order showing the action of the board.

BOARD RESOLUTION

**Adopting Amended TRS Rule 34 Tex. Admin. Code § 23.8,
Relating to Expenditure Reporting by Certain Contractors**

April 18-19, 2013

Whereas, Section 825.212(g) of the Texas Government Code requires the board by rule to require consultants and advisors to TRS and brokers to file regularly with TRS a report detailing any expenditure of more than \$50 made on behalf of a trustee or employee of TRS;

Whereas, The board previously adopted Rule § 23.8 to implement this requirement under section 825.212(e), which rule adopted by reference certain documents, including an expenditure reporting memorandum;

Whereas, In December 2012, the executive director issued a revised expenditure reporting memorandum;

Whereas, Staff has recommended amendments to Rule § 23.8 to adopt the December 2012 revisions to the expenditure reporting memorandum;

Whereas, Pursuant to the authority granted by the policy committee at its December 2012 meeting, TRS published proposed amendments to Rule § 23.8 for public comment in the February 8, 2013 issue of the *Texas Register* (38 TexReg 633), and the public had at least 30 days' notice of TRS' intention to adopt the proposed amendments before the board considered their adoption, and TRS received no comments; and

Whereas, The Policy Committee recommends that the board adopt the proposed amendments to Rule § 23.8 without changes to the text of the proposed rule as published in the *Texas Register*; now therefore, be it

Resolved, That the board hereby:

- 1) Adopts amended rule 34 TEX. ADMIN. CODE § 23.8, without changes to the text of the proposed rule as published in the February 8, 2013 issue of the *Texas Register* (38 TexReg 633);
- 2) Incorporates by reference into this Resolution, as though fully set out in it, the applicable policy committee and board meeting materials, discussions, and actions, including the approved amended rule text and reasoned justification for its adoption as presented in those meeting materials, discussions and actions;
- 3) Grants the TRS staff authority to prepare and to file all documents required by this Resolution, to work with the Office of the Secretary of State in preparing and filings such documents, and to make any technical changes required for publication of the adopted rule; and
- 4) Grants the board chairman authority to sign an order showing the action of the board.

Tab 3B

MEMORANDUM

To: Policy Committee and the Board of Trustees

From: Rebecca M. Smith, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Dennis Gold, Interim General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects

Date: April 1, 2013

Re: Proposed Amendments to Chapter 25, relating to Membership Credit

REQUESTED ACTION

At its December 2012 meeting, the Policy Committee authorized publication for public comment proposed amendments to six rules in Chapter 25 regarding membership eligibility, creditable compensation, and out-of-state service credit. Specifically, the Policy Committee authorized publication of staff-proposed amendments to the following rules: §25.1, relating to Full-time Service; §25.6, relating to Part-time or Temporary Employment; §25.21, relating to Compensation Subject to Deposit and Credit; §25.43 relating to Cost for Unreported Service or Compensation; §25.47, relating to Deadline for Verification; and §25.81, relating to Out-of-State Service Eligible for Credit. The proposed amendments were published and no comments were received at the time of submission of this memorandum. If comments are received prior to the meeting of the Policy Committee, staff will address them at the meeting. The proposed amendments are before the committee now for a recommendation to the Board of Trustees regarding adoption.

WHY THE ACTION IS REQUESTED

The proposed rule changes address how employment in an institution of higher education that is expressed in terms of the number of courses or semester hours taught is considered in determining eligibility for TRS membership. This change would establish the same standard for workloads expressed in course credits or semester hours for determining membership eligibility that is used for one-half time employment for retirees. The proposed amendment regarding temporary employment will clarify how employment on a semester-by-semester basis should be considered in determining membership eligibility. The proposed amendments regarding workers compensation paid as temporary wage replacement pay will clarify and provide notice of how

TRS credits workers compensation in determining benefits. The proposed amendments to the rule regarding establishing out-of-state service credit reflect the 90-day standard for a creditable year of service credit that was adopted for crediting service beginning with the 2011-2012 school year.

BACKGROUND OF THE REQUESTED ACTION

Section 25.1. The standards for membership eligibility in TRS are established in §25.1: employment for one-half or more of the standard full-time work load, for a period of four and one-half months or more, with pay at a rate comparable to the rate of compensation for other persons employed in similar positions. Consistent application of this standard is difficult when the work load is expressed in terms of the number of semester hours or course credits taught, as is the common practice for faculty employed in institutions of higher education, rather than clock hours. The proposed rule amendments establish the same ratio for converting semester hours or course credits to clock hours for the purpose of determining eligibility for membership as that used for the purpose of determining the number of hours worked by a retiree under the one-half time exception: two clock hours for every hour of instruction in the classroom or lab. This conversion ratio reflects the instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. Providing the same conversion ratio for membership eligibility and employment after retirement will reduce confusion, ease communication, and improve consistent administration of the standard. The proposed amendments also clarify that employment in an institution of higher education is “regular” employment if it is *expected* to continue more than one full semester in the same school year or if it continues for more than one full semester in a school year.

Section 25.6. The proposed amendment incorporates the current administrative interpretation of temporary employment for purposes of determining eligibility for membership in TRS for employees of institutions of higher education. Amending the rule to specifically define temporary employment for faculty in higher education will further the consistent application of the eligibility requirements and simplify communication regarding the standard for temporary employment.

Section 25.21. Proposed amendments to this rule regard the eligibility of workers compensation paid as temporary wage replacement pay for credit with TRS. Currently, there is no reference to workers compensation in the TRS rule regarding creditable compensation. However, the current practice is to credit workers compensation for any month that the member also receives creditable compensation from the employer. Because workers compensation is not paid directly by the employer, the member must verify the workers compensation to TRS after the fact and make deposits on the amount of workers compensation paid. With the change in the cost of unreported service increasing to the actuarial cost of the increased benefits associated with the additional compensation credit or service credit, staff recommends that the rule provide notice of how the temporary wage replacement benefit will be credited by TRS. The proposed amendment provides that workers compensation is creditable compensation if the compensation is reported or verified to TRS by the end of the school year following the year in which it was paid. This amendment will allow a member sufficient time to verify the compensation and pay the member contributions before the cost increases.

Section 25.43. The proposed changes to this rule address the amount that must be paid to TRS to receive not only compensation credit for workers compensation but also service credit associated with the workers compensation. If the workers compensation is reported or verified to TRS no later than the last day of the school year following the school year in which the workers compensation was paid, the cost to establish the compensation and associated service credit is the amount of member contributions owed on the compensation. The cost of the compensation and associated service credit must be paid in a lump sum no later than the last day of the school year following the year in which the workers compensation was paid. If the compensation and associated service credit are not verified or reported and/or the member contributions not paid by the end of the school year following the school year in which the workers compensation was paid, the cost of establishing the compensation and/or service credit is the actuarial cost of unreported service or compensation.

Section 25.47. The proposed amendment to this rule clarifies that workers compensation paid as temporary wage replacement pay is not unreported compensation until after the end of the school year following the school year in which the compensation was paid.

Section 25.81. The proposed amendment to this rule updates the rule to reflect the new 90 day standard for the amount of time that a member must have worked in an otherwise eligible position in an out-of-state school in order to purchase the service credit.

RECOMMENDATION

Staff recommends the Policy Committee of the Board of Trustees consider recommending to the Board of Trustees the adoption of the amendments to the rules in Chapter 25 as outlined herein and without changes to the text as published in the *Texas Register* for public comment.

RULE §25.1 Full-time Service.

(a) (No change.)

(b) (No change.)

(c) (No change.)

(d) (No change.)

(e) (No change.)

(1)-(2) (No change.)

(f) (No change.)

(1)-(3) (No change.)

(g) For purposes of subsection (a) of this section, regular employment is employment that is expected to continue for four and one-half months or more. Employment with an institution of higher education (including community and junior colleges) is regular employment if it is expected to continue for more than one full semester or continues for more than one full semester in the same school year. Employment that is expected to continue for less than four and one-half months or for no more than one full semester in a school year is temporary employment and is not eligible for membership.

(h) (No change.)

(i) For purposes of this section, employment in institutions of higher education (including community and junior colleges) measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be converted to clock hours and counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's standard will be used to determine the number of clock hours scheduled for work.

RULE §25.6 Part-time or Temporary Employment.

Part-time (employment that is less than one-half the standard work load), irregular, seasonal, or temporary employment (employment for a definite period of less than four and 1/2 months or for employment with an institution of higher education, the employment is for no more than one semester in a school year) is eligible only if such employment, when combined with other employment in Texas public educational institutions during the same school year, qualifies as service eligible for membership or if such other employment in itself qualifies as service eligible for membership.

RULE §25.21 Compensation Subject to Deposit and Credit

(a) (No change.)

(b) (No change.)

(1)-(3) (No change.)

(c)

(1)-(8) (No change.)

(9) amounts deducted from regular pay for a qualified transportation benefit under Texas Government Code §659.202; ~~and~~

(10) compensation designated as health care supplementation by an employee under Subchapter D of, Chapter 22, Education Code; and

(11) workers' compensation paid as temporary wage replacement pay and reported or verified to TRS and with member contributions paid on the amount of workers' compensation, by the end of the school year following the year in which it was paid. Workers' compensation paid as temporary wage replacement pay and not reported or verified to TRS with member contributions paid on the workers' compensation in the time period provided may be verified and purchased as provided in §25.45 of this title (relating to Verification of Unreported Compensation or Service) and §25.43 of this title (relating to Cost for Unreported Service or Compensation) no later than the end of the fifth year following the school year in which it may be reported or verified under this paragraph.

(d) (No change.)

(1)-(16) (No change.)

(e) (No change.)

(f) (No change.)

RULE §25.43 Cost for Unreported Service or Compensation.

(a) Except as provided by subsections (e), ~~and~~ (f), and (g) of this section, the cost of establishing unreported service or compensation credit is the actuarial cost, as determined by TRS, of the additional standard annuity retirement benefits that would be attributable to the unreported service or compensation credit purchased under this subchapter.

(b) (No change.)

(c) (No change.)

(d) (No change.)

(e) (No change.)

(1)-(3) (No change.)

(f) (No change.)

(g) For purposes of this section, workers' compensation paid as temporary wage replacement pay may be reported or verified to TRS until the end of the school year following the school year in which it is paid. If the workers' compensation is reported or verified to TRS no later than the end of the school year following the school year in which it is paid, member contributions on the workers' compensation paid are required to establish the compensation and service credit associated with the workers' compensation. The member contributions on the worker's compensation must be paid in full in a lump sum by the end of the school year following the year in which the workers' compensation was paid. If the workers' compensation is not reported or verified and member contributions are not paid by the end of the school year following the year in which the workers' compensation is paid, the member may establish the service and compensation as unreported compensation as provided in this section.

RULE §25.47 Deadline for Verification.

(a) (No change.)

(b) (No change.)

(c) (No change.)

(d) For purposes of this section, workers' compensation paid as temporary wage replacement pay is not unreported compensation until after the end of the school year following the school year in which the compensation was paid.

RULE §25.81 Out-of-State Service Eligible for Credit.

A member may obtain out-of-state service credit for qualified employment in public educational institutions which are maintained in whole or in part by one of the states in the United States of America; by a commonwealth, territory, or possession of the United States of America; or by the United States government. Public educational institutions of the United States government must have been maintained for the primary purpose of educating the children of United States citizens either in foreign countries or in locations within the United States where state and local government have not provided public educational facilities. The service in eligible institutions must satisfy the requirements for membership in the Teacher Retirement System of Texas, except for the requirement that the employment be in Texas. Further, the service must have been for at least 4 1/2 months of the school year, or for at least a full semester of more than four calendar months, or for at least 90 days of a school year as a substitute in a position otherwise eligible for out-of-state service. For service rendered in the 2011-2012 school year and after, a member must have worked or received paid leave for at least 90 days in a school year in a position otherwise eligible for out-of-state service or worked for at least 90 days in a school year as a substitute in a position otherwise eligible for out-of-state service. A member may satisfy any of these requirements by combining the out-of-state service with employment in the Texas public schools that occurred in the same school year and for which deposits are maintained in the member's account. A member eligible to establish normal membership service credit for a school year may not obtain out-of-state credit for that year.

Teacher Retirement System of Texas

BOARD RESOLUTION

**Adopting Amended TRS Rules 34 TAC §§25.1, 25.6, 25.21,
25.43, 25.47, and 25.81**

April 18-19, 2013

Whereas, Section 825.102 of the Texas Government Code authorizes the Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) to adopt rules regarding eligibility for membership, the administration of the funds of the system, and the transaction of the business of the board;

Whereas, The standards for membership eligibility in TRS are established in TRS rule §25.1 and provide that employment for one-half or more of the standard full-time work load, for a period of four and one-half months or more, with pay at a rate comparable to the rate of compensation for other persons employed in similar positions is eligible for membership and consistent application of this standard is difficult when the work load is expressed in terms of the number of semester hours or course credits taught by faculty employed in institutions of higher education rather than in clock hours;

Whereas, The proposed rule amendments establish the same ratio for converting semester hours or course credits to clock hours for the purpose of determining eligibility for membership as that used for the purpose of determining the number of hours worked by a retiree under the one-half time exception to employment after retirement and the conversion ratio of two clock hours for every hour of instruction in the classroom or lab reflects the instructional time as well as preparation, grading, and other time typically associated with one hour of instruction;

Whereas, Providing the same conversion ratio for membership eligibility and employment after retirement will reduce confusion, ease communication, and improve consistent administration of the standard and will also clarify that employment in an institution of higher education is "regular" employment if it is *expected* to continue more than one full semester in the same school year or if it continues for more than one full semester in a school year;

Whereas, The proposed amendment in TRS rule §25.6 incorporates the current administrative interpretation of temporary employment for purposes of determining eligibility for membership for employees of institutions of higher education and amending the rule to specifically define temporary employment for faculty in higher education as employment for no more than one semester in a school year will further the consistent application of the eligibility requirements and simplify communication regarding the standard for temporary employment; and

Whereas, The proposed amendments to TRS rule §25.21 regard the eligibility of workers compensation paid as temporary wage replacement pay for credit with TRS which is not currently addressed in TRS rules and the proposed amendments provide that workers compensation is creditable compensation provided that the compensation is reported or verified to TRS by the end of the school year following the year in which it was paid, which will give a member sufficient time to verify the compensation and pay the member contributions before the cost increases;

Whereas, The proposed changes to TRS rule §25.43 address the amount that must be paid to TRS to receive not only compensation credit for workers compensation but also service credit associated with the workers compensation and provide if the workers compensation is reported or verified to TRS no later than the last day of the school year following the school year in which the workers compensation is paid, the cost to establish the compensation and associated service credit is the amount of member contributions owed on the compensation and the cost of the compensation and associated service credit must be paid in a lump sum no later than the last day of the school year following the year in which the workers compensation was paid or be purchased as unreported compensation;

Whereas, The proposed amendment to TRS rule §25.47 clarifies that workers compensation paid as temporary wage replacement pay is not unreported compensation until after the end of the school year following the school year in which the compensation was paid;

Whereas, The proposed amendments to TRS rule §25.81 reflect the new 90-day standard for the amount of time that a member must have worked in an otherwise eligible position in an out-of-state school in order to purchase the service credit;

Whereas, Pursuant to the authority granted by the Policy Committee of the board at its December 2012 meeting, TRS published proposed changes to the rules in Chapter 25 for public comment in the March 15, 2013 issue of the *Texas Register*, and the public had at least 30 days' notice of TRS' intention to adopt the proposed amendments before the board considered their adoption and TRS received no comments; and

Whereas, The board's policy committee has recommended that the board adopt the proposed amendments, and the board desires to adopt the proposed amendments without changes to the published texts of the proposed rule; now, therefore, be it

Resolved, That the board hereby:

- 1) Adopts amended TRS rule 34 TEX. ADMIN. CODE §25.1, 25.5, 25.21, 25.43, 25.47, and 25.81 as published in the March 15, 2013 issue of the *Texas Register* (38 TexReg 1844-47);
- 2) Incorporates by reference into this Resolution, as though fully set out in it, the applicable policy committee and board meeting materials, discussions and

actions, including the approved rule text and reasoned justification for its adoption as presented in those meeting materials, discussions and actions;

- 3) Grants the TRS staff authority to prepare and to file all documents required by this Resolution, to work with the Office of the Secretary of State in preparing and filing such documents, and to make any technical changes required for publication of the adopted rule; and
- 4) Grants the board chairman the authority to sign an order showing the action of the board.

Tab 3C

MEMORANDUM

To: Policy Committee and the Board of Trustees

From: Rebecca M. Smith, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Dennis Gold, Interim General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects

Date: April 1, 2013

Re: Proposed Amendments to Chapter 31, relating to Employment After Retirement

REQUESTED ACTION

At its December 2012 meeting, the Policy Committee authorized publication for public comment proposed amendments to two rules in Chapter 31 regarding employment after retirement and the employer pension surcharge. Specifically, staff proposed amendments to §31.14, relating to One-half Time Employment, and §31.41, relating to Return to Work Employer Pension Surcharge. The proposed amendments were published and no comments were received at the time of submission of this memorandum. If comments are received prior to the meeting of the Policy Committee, staff will address them at the meeting. The proposed amendments are before the committee now for a recommendation to the Board of Trustees regarding adoption.

WHY THE ACTION IS REQUESTED

The proposed rule changes to §31.14 address how employment in an institution of higher education that is expressed in terms of the number of courses or semester hours taught is considered in determining the number of clock hours that can be worked under the limits for one-half time employment by a retiree. The most recent prior changes made to this rule provided a new standard for one-half time employment. The new standard for retirees working for TRS-covered employers allowed a retiree to work the equivalent of four (4) clock hours for every work day in the month without forfeiting the annuity payable for that month. Experience with the rule and the conversion ratio in the rule indicate that further refinement is needed to ensure consistent application of the rule. Similarly, experience with the new standard for one-half time employment for retirees reflects the confusion that occurs when the standard for payment of the pension surcharge is different than the standard for one-half time employment without loss of annuity. The proposed amendments to §31.41 incorporate the same standard for triggering

payment of the pension surcharge and the loss of annuity for exceeding one-half time employment.

BACKGROUND OF THE REQUESTED ACTION

Section 31.14. Recent changes to this rule created one standard for all service retirees working for TRS-covered employers after retirement. In the absence of a twelve full, consecutive calendar month break in service from employment with a TRS-covered employer, retirees who retired after January 1, 2011 are limited to working no more than one-half time without forfeiting the monthly annuity. One-half time means working no more than the equivalent of four clock hours for each work day in that calendar month. A conversion ratio was also added to the rule that required work expressed in the number of course or semester hours taught to be converted to clock hours. The ratio was two clock hours for each course or semester hour.

Experience with the new language revealed a need for further clarification in the ratio language, an improvement that is addressed in the current proposed amendments. Rather than converting semester hours or course credits to clock hours, the proposed amendments direct that the number of hours of instruction in the classroom or lab be converted to clock hours using the conversion ratio. The conversion ratio takes into account not only the amount of time spent instructing students, but also the amount of preparation time, time spent grading work and submitting grades, and similar work related to the classroom instruction. This amendment is recommended to eliminate the need to specifically include the many different terms used by employers to describe the amount of work performed by faculty by using a single standard of the amount of time in the classroom or lab to ensure consistent application of the limit.

Section 31.41. The proposed amendments to this rule address the requirements for triggering payment of the pension surcharge. Currently, a pension surcharge is owed by the employer who employs a retiree who retired September 1, 2005 or after and is working in a TRS-eligible position. Experience with using two different one-half time standards to evaluate the employment of a retiree highlighted the confusion experienced by employers, the difficulty in communicating the two standards to employers and retirees, and the unanticipated cost to both parties when the work triggered the surcharges. The standard for one-half time employment that avoids loss of the monthly annuity is working no more than the equivalent of 4 clock hours for each work day in the calendar month and the standard for triggering the surcharge is working at least one-half the full-time load for a period of four and one-half months or more. The proposed amendments establish the same standard for triggering payment of the surcharge and the loss of annuity for exceeding one-half time employment.

RECOMMENDATION

Staff recommends the Policy Committee of the Board of Trustees consider recommending to the Board of Trustees the adoption of the amendments to the rules in Chapter 31 as outlined herein and without changes to the text as published in the *Texas Register* for public comment.

RULE §31.14 One-half Time Employment.

(a) (No change.)

(b) (No change.)

(c) (No change.)

(d) For the purpose of this section, actual course or lab instruction with an institution of higher education in state-supported colleges (including community and junior colleges), ~~and universities~~ that is expressed measured in terms of number of courses; course or semester hours/credits; instructional units; or other units of time representing class or instructional time shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab ~~per one course or semester hour~~ in order to reflect instructional time as well as preparation, grading, and other time typically associated with one ~~course~~ hour of instruction. If the employer has established a greater amount of preparation time for each ~~course or semester~~ hour in the classroom or lab, the employer's established standard will be used to determine the number of courses or labs or semester hours a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section.

(e) This exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for one-half time employment under this section and the exception for substitute service under §31.13 of this ~~chapter title~~ (relating to Substitute Service) may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work.

(f) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this ~~chapter title~~ (relating to Full-time Employment after 12 - Consecutive -Month Break in Service).

(g) (No change.)

RULE §31.41 Return to Work Employer Pension Surcharge.

(a) For school years prior to the 2013-2014 school year, for each report month a retiree who retired September 1, 2005 or after is working for a TRS-covered employer (employer) or third party entity in a position eligible for membership in TRS, the employer that reports the retiree on the Employment of Retired Members Reports shall pay the Teacher Retirement System of Texas (TRS) the surcharge described in this section. ~~(ab) Beginning September 1, 2013, f~~ For each report month a retiree is working for an in a TRS covered position employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month and reported on the Employment of Retired Members Report, the employer that reports the retiree on the Employment of Retired Members Report shall pay to the Teacher Retirement System of Texas (TRS) a surcharge based on the retiree's salary paid that report month. For purposes of this section, the employer is the reporting entity that reports the employment of the retiree and the criteria used to determine if the retiree is working more than the equivalent of four clock hours for each work day in that calendar month in a TRS covered position are the same as the criteria

for determining one-half time employment under §31.14 of this title (relating to One-half Time Employment) eligible for TRS membership, ~~except that, A~~ a retiree reported as a substitute must meet the requirements of §31.1(b) of this title (relating to Definitions) for the surcharge not to apply.

~~(bc)~~ The surcharge amount that must be paid by the employer for each retiree working more than the equivalent of four clock hours for each work day in that calendar month ~~in a TRS-covered position~~ is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on member contribution rate and the state pension contribution rate.

~~(de)~~ The surcharge is due from each employer that reports a retiree as working as described in this section on or after September 1, 2005, beginning with the report month for September 2005.

~~(ed)~~ The surcharge is not owed by the employer for any retiree ~~employed~~ who retired from the retirement system before September 1, 2005.

~~(fe)~~ The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with other ~~TRS-covered~~ employment with the same or another employer or third party entity in the same calendar month. For each calendar month that the retiree combines substitute service and other ~~TRS-covered~~ employment as described so that the work exceeds one-half time as described in §31.14(e) of this title, the surcharge is owed on all compensation paid to the retiree, including compensation paid for substitute service. If the employment is with more than one employer, the surcharge is owed by each employer on the compensation paid by that employer ~~by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.~~

~~(gf)~~ The surcharge is owed by the employer on any retiree who is working for a third party entity and performing duties or providing services on behalf of the employer for more than the equivalent of four clock hours for each work day in that calendar month ~~but serving in a TRS-covered position~~ and who is considered an employee of that employer under §824.601(d) of the Government Code.

~~(hg)~~ Except as provided in subsection (f) of this section relating to combining substitute service with other employment, ~~if~~ a retiree is employed concurrently in more than one position ~~that is not eligible for TRS membership~~, the surcharge is owed if the combined employment is for more than the equivalent of four clock hours for each work day in that calendar month ~~eligible for membership under §25.6 of this title (relating to Part-time or Temporary Employment)~~. If the employment is with more than one employer, the surcharge is owed by each employer.

~~(i)~~ For school years prior to the 2013-2014 school year, if a retiree is employed concurrently in more than one position that is not eligible for membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title (relating to Part-time or Temporary Employment). If the employment is with more than one employer, the surcharge is owed by each employer.

~~(hj)~~ For school years prior to the 2013-2014 school year, ~~if~~ a retiree is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge is owed by each employer.

| (~~k~~) [For school years prior to the 2013-2014 school year, i](#)f a retiree is employed in a position eligible for TRS membership, the surcharge is owed by each employer on all subsequent employment with a TRS-covered employer for the same school year.

Teacher Retirement System of Texas

BOARD RESOLUTION

Adopting Amended TRS Rules 34 TAC §31.14 and §31.41

April 18-19, 2013

Whereas, Section 824.601 of the Texas Government Code authorizes the Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) to adopt rules to implement the limits on employment after retirement and §825.102 of the Texas Government Code authorizes the board to adopt rules regarding eligibility for membership, the administration of the funds of the system, and the transaction of the business of the board;

Whereas, Recent changes to §31.14 created one standard for one-half time employment for all service retirees working for TRS-covered employers that allows each retiree to work the equivalent of four clock hours for each work day in that calendar month without forfeiting the annuity for that month and a conversion ratio was also added to the rule that required work expressed in the number of course or semester hours taught to be converted to clock hours with each course or semester hour counted as two clock hours;

Whereas, Experience with the new standard revealed a further need for clarification in the conversion ratio language to eliminate the need to include the many different terms used to describe the amount of work performed by faculty by using a single standard of the amount of time in the classroom or lab to ensure consistent application and the proposed amendments provide a conversion ratio of 2 clock hours for every hour of instruction or time in the classroom or lab that takes into account not only the amount of time spent instructing students, but also the amount of preparation time, time spent grading work and submitting grades, and similar work related to the classroom instruction;

Whereas, The proposed amendments to §31.41 address the requirements for triggering payment of the pension surcharge which currently require that a pension surcharge be paid when a retiree is employed for one-half or more of the full-time load but the limit on one-half time employment for the retiree utilizes a standard of working no more than the equivalent of 4 clock hours for each working day in the month;

Whereas, Experience with using two different one-half time standards to evaluate the employment of a retiree highlighted the confusion experienced by employers, the difficulty in communicating the two standards to employers and retirees, and the unanticipated cost to both parties when the work triggered the surcharges and the proposed amendments will establish the same standard for triggering payment of the surcharge and the loss of annuity for exceeding one-half time employment; and

Whereas, Pursuant to the authority granted by the Policy Committee of the board at its December 2012 meeting, TRS published proposed changes to the rules in Chapter 31 for public comment in the March 15, 2013 issue of the *Texas Register*, and the public had at least 30 days' notice of TRS' intention to adopt the proposed amendments before the board considered their adoption and TRS received no comments; and

Whereas, The board's policy committee has recommended that the board adopt the proposed amendments, and the board desires to adopt the proposed amendments without changes to the published texts of the proposed rule; now, therefore, be it

Resolved, That the board hereby:

- 1) Adopts amended TRS rule 34 TEX. ADMIN. CODE §31.14 and §31.41 as published in the March 15, 2013 issue of the *Texas Register* (38 TexReg 1848);
- 2) Incorporates by reference into this Resolution, as though fully set out in it, the applicable Policy Committee and board meeting materials, discussions and actions, including the approved rule text and reasoned justification for its adoption as presented in those meeting materials, discussions and actions;
- 3) Grants the TRS staff authority to prepare and to file all documents required by this Resolution, to work with the Office of the Secretary of State in preparing and filing such documents, and to make any technical changes required for publication of the adopted rule; and
- 4) Grants the board chairman the authority to sign an order showing the action of the board.

Tab 3D

MEMORANDUM

To: Policy Committee and the Board of Trustees

From: Rebecca M. Smith, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Dennis Gold, Interim General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects
Clarke Howard, Assistant General Counsel

Date: April 1, 2013

Re: Proposed Amendments to Chapter 41, relating to Health Care and Insurance Programs

REQUESTED ACTION

At its December 2012 meeting, the Policy Committee authorized publication for public comment proposed amendments to one rule in Chapter 41 regarding TRS-Care and the health benefit surcharge owed by employers when retirees are employed. Specifically, staff proposed amendments to §41.4, relating to Employer Health Benefit Surcharge. The proposed amendments were published and no comments were received at the time of submission of this memorandum. If comments are received prior to the meeting of the Policy Committee, staff will address them at the meeting. The proposed amendments are before the committee now for a recommendation to the Board of Trustees regarding adoption.

WHY THE ACTION IS REQUESTED

The proposed changes to §41.4 establish a new standard for triggering payment of the health benefit surcharge. Prior changes made to §31.14, relating to One-half Time Employment, established a new standard for one-half time employment after retirement. Under the revised standard, service retirees can work the equivalent of four (4) clock hours for each work day in the calendar month without forfeiting the annuity for the month. A ratio for converting the number of course credits or semester hours taught to clock hours was also established. However, payment of the health benefit surcharge is required when the retiree is hired in a position eligible for membership in TRS and membership is authorized when the employee is working one-half or more of the full-time load for a period of four and one-half months or more. Experience with the revised language of the rule reflected confusion with the different standards used to trigger

payment of the health benefit surcharge and for loss of annuity for exceeding one-half time employment. The proposed amendments to §41.4 incorporate the same standard for triggering payment of the health benefit surcharge as the limit on one-half time employment that results in loss of the monthly annuity and tracks the standard used for triggering payment of the pension surcharge.

BACKGROUND OF THE REQUESTED ACTION

Section 41.4. The proposed amendments to this rule address the requirements for triggering payment of the health benefit surcharge. Currently, a health benefit surcharge is owed by the employer who employs a retiree who retired September 1, 2005 or after and who is working in a TRS-eligible position. Experience with using the new standard for one-half time employment for retirees (equivalent of 4 clock hours for each work day in the calendar month) and the standard for one-half time employment eligible for membership (one-half the full-time load) to trigger payment of the health benefit surcharge revealed confusion on the part of employers, difficulty in communicating the two standards to the employers and retirees, and unanticipated cost to both when the retiree worked one-half time. The proposed amendments establish the same standard for triggering payment of the surcharge and loss of annuity for exceeding one-half time employment.

RECOMMENDATION

Staff recommends the Policy Committee of the Board of Trustees consider recommending to the Board of Trustees the adoption of the amendments to the rule in Chapter 41 as outlined herein and without changes to the text as published in the *Texas Register* for public comment.

RULE §41.4 Health Benefit Surcharge.

~~(a)~~ When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

~~(b)~~ For school years prior to the 2013-2014 school year, for each report month a retiree is enrolled in the health benefits program (TRS-Care) provided pursuant to the Texas Public School Retired Employees Group Benefits Act and working for an employer or a third party entity as defined in §824.601, Government Code, in a position eligible for membership in TRS, the employer that reports the retiree on the Employment of Retired Members Report shall pay the monthly surcharge described in this section to the Retired School Employees Group Insurance Fund (the Fund).

~~(b)~~ Beginning September 1, 2013, for each report month a retiree is enrolled in the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act, and is working for an employer in a TRS-covered position for more than the equivalent of four clock hours for each work day in that calendar month, the employer that reports the employment of the retiree and is reported on the Employment of Retired Members Report to the Teacher Retirement System of Texas ("TRS"), the employer that reports the retiree shall pay monthly to the Retired School Employees Group Insurance Fund (the "Fund") a surcharge established by the Board of Trustees of TRS.

~~(c)~~ The criteria used to determine if the retiree is working more than the equivalent of four clock hours for each work day in that calendar month in a TRS-covered position are the same as the criteria for determining one-half time employment under §31.14 of this title (relating to One-half Time Employment) eligible for TRS membership.

~~(d)~~ The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is working for more than the equivalent of four clock hours for each work day in that calendar month serving in a TRS-covered position, and who is considered an employee of that employer under §824.601(d) of the Government Code.

~~(e)~~ The surcharge under ~~subsection (b) of~~ this section is not owed:

(1) by an employer for any retiree ~~employed by that employer~~ who retired from TRS before September 1, 2005; or

(2) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with other ~~TRS-covered~~ employment with the same or another employer or third party entity in the same calendar month. For each calendar month that the retiree combines substitute service and other ~~TRS-covered~~ employment as described so that the work exceeds one-half time as described in §31.14(e) of this title, the surcharge is owed by each employer as provided in this section.

~~(f)~~ A retiree who is enrolled in TRS-Care, is working for an in a TRS-covered employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month position, and is reported on the Employment of Retired Members Report to TRS shall inform the employer ~~of the identification of~~ all employers of the retiree and all employers of any other retiree enrolled under the same account identification number. An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care and is working more than the equivalent of four clock hours for each work day in that calendar month in a TRS-covered position shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.

~~(g)~~ If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under ~~subsection (b) of~~ this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not

based on the number of hours respectively worked ~~each week~~ by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

(hi) If a retiree who is enrolled in TRS-Care is employed concurrently by one or more employers in more than one position ~~that is not eligible for TRS membership~~, the surcharge is owed if the combined employment is for more than the equivalent of four clock hours for each work day in that calendar month eligible for membership under §25.6 of this title. If the employment is with more than one employer, the surcharge will be paid according to subsection (hg) of this section by each employer.

(ij) For school years prior to the 2013-2014 school year, if a retiree who is enrolled in TRS-Care is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge will be paid according to subsection (hg) of this section by each employer.

(kj) For school years prior to the 2013-2014 school year, if a retiree who is enrolled in TRS-Care is employed in a position eligible for TRS membership, the surcharge will be paid according to subsection (hg) of this section by each employer on all subsequent employment, whether eligible for membership or not, with a TRS-covered employer for the same school year.

(lk) The employer shall maintain the confidentiality of any information provided to the employer under this section and shall use the information only as needed to carry out the purposes stated in this section and related applicable rules or statutes.

Teacher Retirement System of Texas

BOARD RESOLUTION

Adopting Amended TRS Rule 34 TAC §41. 4

April 18-19, 2013

Whereas, The Texas Public School Retired Employees Group Benefits Act (the "Act"), Chapter 1575, Insurance Code, authorizes the Teacher Retirement System of Texas (TRS), as trustee, to implement and administer a uniform group health benefits program ("TRS-Care"), as described in the Act;

Whereas, Section 1575.204, Insurance Code, requires the employer of a reported retiree to pay a health benefit surcharge based on the difference between the amount the retiree is required to pay monthly for the retiree's and any enrolled dependent's coverage under TRS-Care and the monthly full cost of such coverage for the retiree and any enrolled dependent (the "monthly employer health benefit surcharge amount");

Whereas, Section 1575.052, Insurance Code, authorizes the TRS Board of Trustees ("board") to adopt rules it considers necessary to implement and administer the TRS-Care program;

Whereas, Recent changes to TRS rule §31.14, relating to one-half time employment, establish a new standard for one-half time employment after retirement and establish a ratio for converting course credits or semester hours to clock hours;

Whereas, The proposed amendments to TRS rule §41.4, relating to the return-to-work employer health benefit surcharge, establish a new standard for triggering payment of the monthly employer health benefit surcharge by incorporating the same standard used for triggering payment of the pension surcharge;

Whereas, Pursuant to the authority granted by the Policy Committee of the board at its December 2012 meeting, TRS published proposed changes to §41.4 for public comment in the March 15, 2013 issue of the *Texas Register*, and the public had at least 30 days' notice of TRS' intention to adopt the proposed amendments before the board considered their adoption and TRS received no comments; and

Whereas, The board's policy committee has recommended that the board adopt the proposed amendments, and the board desires to adopt the proposed amendments without changes to the published texts of the proposed rule; now, therefore, be it

Resolved, That the board hereby:

- 1) Adopts amended TRS rule 34 TEX. ADMIN. CODE §41. 4 as published in the March 15, 2013 issue of the *Texas Register* (38 TexReg 1851);

- 2) Incorporates by reference into this Resolution, as though fully set out in it, the applicable policy committee and board meeting materials, discussions and actions, including the approved rule text and reasoned justification for its adoption as presented in those meeting materials, discussions and actions;
- 3) Grants the TRS staff authority to prepare and to file all documents required by this Resolution, to work with the Office of the Secretary of State in preparing and filing such documents, and to make any technical changes required for publication of the adopted rule; and
- 4) Grants the board chairman the authority to sign an order showing the action of the board.

Tab 3E

MEMORANDUM

To: Policy Committee and the Board of Trustees

From: Rebecca M. Smith, Assistant General Counsel

Copy: Brian Guthrie, Executive Director
Ken Welch, Deputy Director
Dennis Gold, Interim General Counsel
Rebecca Merrill, Special Advisor to the Executive Director and Manager of Special Projects

Date: April 1, 2013

Re: Proposed Amendments to Chapter 47, relating to Qualified Domestic Relations Orders

REQUESTED ACTION

At its December 2012 meeting, the Policy Committee authorized publication for public comment proposed amendments to one rule in Chapter 47 regarding qualified domestic relations orders. Specifically, staff proposes amendments to §47.10, relating to Determination of Whether an Order is a Qualified Domestic Relations Order. The proposed amendments were published and no comments were received at the time of submission of this memorandum. If comments are received prior to the meeting of the Policy Committee, staff will address them at the meeting. The proposed amendments are before the committee now for a recommendation to the Board of Trustees regarding adoption.

WHY THE ACTION IS REQUESTED

The proposed rule changes to §47.10 establish a requirement that domestic relations orders entered by a court September 1, 2013 or after must be in a form prescribed by TRS. Currently, TRS provides a model order to aid parties in drafting a domestic relations order that meets all of the plan requirements in order to be a qualified order. Although most orders are based in large part on the model order, many parties include limiting language or additional requirements that are difficult for TRS to administer and/or require manual administration. TRS received statutory authorization in the last legislative session to require use of a prescribed form or model. The proposed changes to §47.10 implement the statutory authority to require that parties use a prescribed model for an order to be approved by TRS as a qualified order.

BACKGROUND OF THE REQUESTED ACTION

Section 47.10. TRS was given authority in 1991 to administer qualified domestic relations orders. A domestic relations order is any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member or retiree, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or another state.

A court enters the domestic relations order that directs TRS to pay an alternate payee a part or all of the benefits owed on behalf of the participant and TRS must review the order and determine if it is a qualified order. The Legal-Benefits Team in the Legal Services Department performs this review on behalf of the Executive Director. The parties are notified by TRS if the order is approved and the requirements of the order are set up in the alternate payment system (ALTP) for administration. If the order does not meet the statutory requirements, the parties are provided a written determination that the order is not a qualified order that includes the basis for the rejection of the order. The parties may then either return to court to obtain an amended order or may appeal the determination to district court in Travis County after a request to the Executive Director for reconsideration.

TRS developed the first model domestic relations order in 1992 and continues to use a revised version of the original model order. However, in the absence of a requirement to use the model order, courts make revisions to the order that must be evaluated for compliance with the plan's terms. A determination must also be made that it is possible for TRS to administer the order programmatically. For example, one party may owe the other a sum of money or an equal division of the assets cannot be achieved. The court may order the amount owed to be deducted from the benefits to be received from TRS or may order a disproportionate share of one type of benefit to be awarded to the former spouse. The responsibility for tracking the payments and administering the division introduces the possibility of human error and can become a liability for the trust fund. By having the requirement that the parties use a form or model prescribed by TRS, programming can be developed to ensure the accurate administration of the order and reduce the amount of staff time required to manually track payments. Also, the amount of staff time required to review and approve or reject orders will also be reduced by the requirement to use a prescribed form.

RECOMMENDATION

Staff recommends the Policy Committee of the Board of Trustees consider recommending to the Board of Trustees the adoption of the amendments to the rule in Chapter 47 as outlined herein and without changes to the text as published in the *Texas Register* for public comment.

RULE §47.10 Determination of Whether an Order is a Qualified Domestic Relations Order

(a) A domestic relations order entered by a court of competent jurisdiction September 1, 2013 or after must be in a form prescribed by TRS. The form prescribed by TRS must ensure compliance with the requirements in subsection (b) of this section.

(b) For domestic relations orders entered by a court of competent jurisdiction before September 1, 2013, TRS shall apply the statutory criteria to determine whether an order is a QDRO. The following provisions shall also be used in making the determination.

(1) The order must provide for each possible distribution by the retirement system for the member or retiree. This requirement may be met by a provision that:

(A) awards a specified or clearly determinable percentage, rather than an amount, of each distribution by TRS based on the participant's account; or

(B) awards all benefits not specified to the participant to be paid in accordance with plan provisions.

(2) The order must provide for reducing the amount awarded in the event of reduction of the benefit based on the age of the participant, each reduction to be in proportion to the factors used to reduce the standard annuity on the basis of the participant's age below normal retirement age.

This requirement shall not apply if:

(A) the order awards a percentage of whatever monthly benefit is payable after all elections have been made by the member, or in the event of death benefits, by the designated beneficiary;

(B) the member or retiree has reached normal retirement age and, if a retiree, has retired without any reduction for early age retirement at the time of the determination as to whether the order is a QDRO; or

(C) the order reflects that the retiree is, or will be receiving, retirement benefits reduced for early age retirement and the award to the alternate payee has considered the reduced amount of the retiree's annuity payments.

(3) The order may not:

(A) purport to require the designation by the participant of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(B) purport to require the selection of a particular payment plan or benefit option;

(C) require any action on the part of the retirement system contrary to its governing statutes or plan provisions other than the direct payment of the benefit awarded to an alternate payee; or

(D) award any interest in distributions by the retirement system contingent on any condition other than those conditions resulting in the liability of the retirement system for payment under its plan provision.

(4) A QDRO may not provide for the award of a specific amount of a benefit, rather than a percentage of this benefit, to an alternate payee unless the order also provides for a reduction of the amount awarded in the event that the benefits available to the retiree or member are reduced by law. This requirement shall not apply to benefit waivers executed by the participant.

(5) If the order intends to award the participant the full amount of any future benefit increases that are provided or required by the legislature, the order must explicitly state such. TRS, its board of trustees, and its officers and employees shall not be liable for making payment of part of any future benefit increases to any person if the order so requires or if the order awards a percentage of benefits payable and does not explicitly state that future benefit increases are awarded solely and completely to the plan participant.

- (6) An order that purports to give to someone other than a member the right to designate a beneficiary or choose any retirement plan available from TRS is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO.
- (7) An order that attaches a lien to any part of amounts payable with respect to a member or retiree is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.
- (8) An order that awards an alternate payee a portion of the benefits payable with respect to a member or retiree under TRS and that purports to require TRS to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum is one that requires action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO.
- (9) An order shall specify the date of the marriage.
- (10) An order that allocates the participant's investment in contract in a manner not in compliance with any requirements of the Internal Revenue Code and applicable regulations is not a QDRO. An order that does not allocate a participant's investment in contract may be determined to be a QDRO if it provides sufficient information for TRS to make the allocation in accordance with applicable laws and regulations.
- (11) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement, is not a QDRO.
- (12) The order must satisfy the requirements of Internal Revenue Code §414(p)(1)(A)(i) and §414(p)(1)(B).
- (13) The order may contain provisions consistent with [Government Code §824.1012](#), ~~Government Code~~, or §824.1013, ~~Government Code~~, and TRS may rely on the provisions of the order as though the provisions were included in the decree of divorce or order accepting a property settlement.
- (14) The order may specify an alternative method for the parties to verify their Social Security numbers to TRS, if the court finds that omission of the numbers in the order is necessary to reduce the risk of identity theft. The order is not a QDRO if TRS finds that the method of verification is insufficient for the purpose of payment of benefits or reporting of income for tax purposes.

Teacher Retirement System of Texas

BOARD RESOLUTION

Adopting Amended TRS Rule 34 TAC §47.10

April 18-19, 2013

Whereas, Section 804.003(n) of the Texas Government Code authorizes the Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) to adopt rules to implement the provisions for payments to an alternate payee under the terms of a qualified domestic relations order, and §825.102 of the Texas Government Code authorizes the board to adopt rules regarding eligibility for membership, the administration of the funds of the system, and the transaction of the business of the board;

Whereas, TRS first developed a model domestic relations order in 1992 to assist parties and their attorneys in drafting an order that meets all of the plan's requirements for a qualified order;

Whereas, Experience with the model order reflects that, in the absence of a requirement to use the model order, many parties revise the order, making changes that must be evaluated for compliance with the plan's terms and often require manual administration of the order, a process which introduces the possibility of human error and liability for the trust fund;

Whereas, Recent changes to §804.003(g) of the Texas Government Code authorize TRS to reject a domestic relations order as a qualified order unless the order conforms to a model order;

Whereas, Requiring the parties to use a model order prescribed by TRS will reduce the amount of staff time required to review the orders and manually track payments, will allow TRS to develop programming to ensure accurate administration of the order, and will reduce liability for the trust fund;

Whereas, The proposed amendment to TRS rule §47.10 implements the statutory authority to require use of a prescribed form in order for the domestic relations order to be approved by TRS as a qualified order;

Whereas, Pursuant to the authority granted by the Policy Committee of the board at its December 2012 meeting, TRS published proposed changes to the rule in Chapter 47 for public comment in the March 15, 2013 issue of the *Texas Register*, and the public had at least 30 days notice of TRS' intention to adopt the proposed amendments before the board considered their adoption and TRS received no comments; and

Whereas, The board's policy committee has recommended that the board adopt the proposed amendments, and the board desires to adopt the proposed amendments without changes to the published text of the proposed rule; now, therefore, be it

Resolved, That the board hereby:

- 1) Adopts amended TRS rule 34 TEX. ADMIN. CODE §47.10 as published in the March 15, 2013 issue of the *Texas Register* (38 TexReg 1853);
- 2) Incorporates by reference into this Resolution, as though fully set out in it, the applicable policy committee and board meeting materials, discussions and actions, including the approved rule text and reasoned justification for its adoption as presented in those meeting materials, discussions and actions;
- 3) Grants the TRS staff authority to prepare and to file all documents required by this Resolution, to work with the Office of the Secretary of State in preparing and filing such documents, and to make any technical changes required for publication of the adopted rule; and
- 4) Grants the board chairman the authority to sign an order showing the action of the board.