

# Policy Committee Meeting

June 5, 2014

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

*(Mr. Colonna, Chairman; Mr. Barth; Mr. Corpus; Mr. Kelly; & Ms. Ramirez, Committee Members)*

**AGENDA**

**June 5, 2014 – 12:00 p.m.  
TRS East Building, 5<sup>th</sup> Floor, Boardroom**

1. Consider the approval of the proposed minutes of the March 27, 2014 committee meeting – Joe Colonna.
2. Consider recommending to the Board final proposed amendments to or adoption of the following TRS rules in Title 34, Part 3 of the Texas Administrative Code – Beckie Smith:
  - A. Rule § 23.5, relating to Nomination for Appointment to the Board of Trustees;
  - B. Rule § 25.1, relating to Full-time Service;
  - C. Rule § 25.25, relating to Required Deposits;
  - D. Proposed new Rule § 25.36, relating to Employer Payments for Members Not Covered under the Federal Old-Age, Survivors, and Disability Insurance Program;
  - E. Proposed new Rule § 25.37, relating to Employer Payments from Public Junior Colleges and Public Junior College Districts;
  - F. Rule § 25.77, relating to USERRA Service Creditable but not Established;
  - G. Rule § 25.113, relating to Transfer of Credit between TRS and ERS;
  - H. Rule § 25.302, relating to Calculation of Actuarial Cost;
  - I. Proposed new Rule § 25.303, relating to Calculation of Actuarial Costs for Purchase of Compensation Credit;
  - J. Rule § 27.5, relating to Termination of Rights to Benefits;
  - K. Rule § 29.1, relating to Eligibility for Service Retirement;
  - L. Rule § 29.11, relating to Actuarial Tables;
  - M. Rule § 43.43, relating to Subpoenas and Commissions; and
  - N. Proposed new Rule § 51.13, relating to Five Year Service Credit Requirement Effective August 31, 2014.

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.



## **Minutes of the Policy Committee**

March 27, 2014

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on March 27, 2014, 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  
David Corpus  
David Kelly  
Dolores Ramirez

### Others present:

Christopher Moss, TRS Trustee	Tom Guerin, TRS
Anita Palmer, TRS Trustee	Juan Durán, TRS
Nanette Sissney, TRS Trustee	Adam Fambrough, TRS
Brian Guthrie, TRS	Dan Junell, TRS
Ken Welch, TRS	Lynn Lau, TRS
Carolina de Onís, TRS	Scot Leith, TRS
Howard Goldman, TRS	Kirsten Morgan, TRS
Britt Harris, TRS	Barbie Pearson, TRS
Betsey Jones, TRS	Mike Pia, TRS
Marianne Woods Wiley, TRS	Beckie Smith, TRS
Jerry Albright, TRS	David Veal, TRS
Thomas Albright, TRS	Courtney Villalta, TRS
Jase Auby, TRS	Dr. Keith Brown, Investment Advisor
Mohan Balachandran, TRS	Steven Huff, Fiduciary Counsel
Nick Ballard, TRS	Brady O'Connell, Hewitt EnnisKnupp
Ashley Baum, TRS	Ann Fickel, Texas Classroom Teachers Association
Ronnie Bounds, TRS	Philip Mullins, Texas State Employees Union
Vaughn Brock, TRS	Josh Sanderson, Association of Texas Professional Educators
Mary Chang, TRS	Tom Rogers, Texas Retired Teachers Association & Austin Retired Teachers Association

Mr. Colonna called the meeting to order at 11:15 a.m. All committee members were present.

### **1. Consider the approval of the proposed minutes of the December 12, 2013 committee meeting – Joe Colonna.**

On a motion by Mr. Kelly, seconded by Mr. Barth, the committee approved the proposed minutes of the December 12, 2013 meeting as presented.

### **2. Conduct the required review of the Trustee External Communications Policy – Howard Goldman.**

Pursuant to the Policy Review schedule, Mr. Goldman presented the proposed amended Trustee External Communications Policy for the committee's review. He stated that the proposed changes would update references to relevant Texas statutes, add a reference to social media as a means of communication, and clarify language regarding trustees' ethical obligations and TRS' contractual obligations.

On a motion by Mr. Barth, seconded by Ms. Ramirez, the committee voted unanimously to recommend that the board adopt the amended Trustee External Communications Policy as presented.

- 3. Begin the comprehensive review of Chapters 21-51 of TRS' rules in Title 34, Part 3, of the Texas Administrative Code, and consider approving a related Rule Review Plan and authorizing for public comment publication in the Texas Register a related Notice of Intention to Review (Proposed Rule Review Notice) – Dan Junell.**

Mr. Junell stated that in December 2013 the board completed the four-year rule review of the rules in Chapter 53 relating to the 403(b) rules. At this meeting, he said, staff would ask the committee to begin the review of all the rules in Chapters 21-51 by approving the proposed rule review plan and notice. He provided the timeline of completing the current rule review for Chapters 21-51. Mr. Guthrie noted that staff would also use the four-year rule review to identify potential changes that could be presented to the legislature for consideration.

On a motion by Mr. Kelly, seconded by Mr. Barth, the committee voted unanimously to authorize public-comment publication of the proposed rule review plan and notice for Chapter 21-51 rules in the *Texas Register*, as presented by staff.

- 4. Consider authorizing for public comment publication in the *Texas Register* proposed amendments to or adoption of the following TRS rules in Title 34, Part 3 of the Texas Administrative Code – Beckie Smith:**
  - A. Rule § 23.5, relating to Nomination for Appointment to the Board of Trustees;**
  - B. Rule § 25.1, relating to Full-time Service;**
  - C. Rule § 25.25, relating to Required Deposits;**
  - D. Proposed new Rule § 25.36, relating to Employer Payments for Members Not Covered under the Federal Old-Age, Survivors, and Disability Insurance Program;**
  - E. Proposed new Rule § 25.37, relating to Employer Payments from Public Junior Colleges and Public Junior College Districts;**
  - F. Rule § 25.77, relating to USERRA Service Creditable but not Established;**
  - G. Rule § 25.113, relating to Transfer of Credit between TRS and ERS;**
  - H. Rule § 25.302, relating to Calculation of Actuarial Cost;**



- I. Proposed new Rule § 25.303, relating to Calculation of Actuarial Cost for Purchase of Compensation Credit;**
- J. Rule § 27.5, relating to Termination of Rights to Benefits;**
- K. Rule § 29.1, relating to Eligibility for Service Retirement;**
- L. Rule § 29.11, relating to Actuarial Tables;**
- M. Rule § 43.43, relating to Subpoenas and Commissions; and**
- N. Proposed new Rule § 51.13, relating to Five Year Service Credit Requirement Effective August 31, 2014.**

Ms. Smith presented the proposed amendments to sections 23.5, 25.1, 25.25, 25.36, 25.37, 25.77, 25.113, 25.302, 25.303, 27.5, 29.1, 29.11, 43.43, and 51.13 of TRS' rules. She stated that the amendments were proposed mainly to address legislative changes from the last legislative session. Responding to a question from Mr. Moss regarding the timeline of implementing the amended rules, Ms. Smith stated that the majority of the changes would not be effective until September 2014, and members had been informed of these changes through the *TRS Benefits Handbook* and *TRS News*.

On a motion by Mr. Barth, seconded by Ms. Ramirez, the committee voted unanimously to authorize public comment publication for the proposed amended rules as presented by staff.

The meeting adjourned at 11:30 a.m.



Legal Services

## Memorandum

**DATE:** May 22, 2014

**TO:** Policy Committee of the Board of Trustees

**FROM:** Rebecca M. Smith, Assistant General Counsel

**COPY:** Brian Guthrie, Executive Director  
Ken Welch, Deputy Director  
Carolina de Onís, General Counsel

**RE:** Proposed Amendments to Chapter 23, relating to Administrative Procedures

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### REQUESTED ACTION

At its March 2014 meeting, the Policy Committee authorized publication for public comment proposed amendments to one rule in Chapter 23, relating to Administrative Procedures. Specifically, the Policy Committee authorized publication of proposed amendments to §23.5, relating to Nomination for Appointment to the Board of Trustees. The proposed amendments were published for at least 30 days 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 the comments at the meeting. The proposed amendments are before the Policy Committee now for a recommendation to the Board of Trustees regarding adoption.

### WHY THE ACTION IS REQUESTED

The proposed rule changes to §23.5 clarify that members employed in charter schools and regional education service centers may nominate, pursue the nomination, and vote for the public school district candidate for the Board of Trustees. TRS requested and received statutory authority in the last legislative session to specifically address how members employed by charter schools and regional education service centers may participate in the nomination of candidates to serve on the TRS Board of Trustees. This clarification is consistent with the practice of TRS to allow members employed by these entities to nominate and to participate in the nomination of the candidate to serve in the public school district position of the TRS Board of Trustees.

### BACKGROUND OF THE REQUESTED ACTION

Section 23.5, relating to Nomination for Appointment to the Board of Trustees. Plan terms do not consistently identify members based on the type of employer. In some instances members will be

characterized as employees serving in membership eligible positions with Texas public schools. In other instances, the terms may distinguish between public school districts and institutions of higher education. In this section regarding the nomination of candidates to serve in the positions on the Board of Trustees that represent members and retirees, the statute previously authorized public school district members to nominate, pursue nomination, and vote for candidates for the public school district position on the Board of Trustees; however, members serving in charter schools and regional education service centers are not employees of public school districts. Although TRS historically included these members in the nomination and voting process, statutory authority to do so was expressly clarified in HB 3357 enacted during the most recent legislative session. The proposed changes to this rule reflect the statutory changes that specifically authorize employees of charter schools and regional education service centers to nominate, pursue nomination, and vote for candidates for the public school district position of the Board of Trustees.

#### **RECOMMENDATION**

Staff recommends that the Policy Committee of the Board of Trustees consider recommending to the Board of Trustees the adoption of the amendments to §23.5, relating to Nomination for Appointment to the Board of Trustees, as outlined herein and without changes to the text as published in the *Texas Register* for public comment.

**RULE §23.5****Nomination for Appointment to the Board of Trustees**

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(a) During any calendar year in which the term of office expires for one of the four trustees of the Teacher Retirement System of Texas (TRS or system) for which an election is required, TRS will conduct the required election between March 15 and May 5 of that calendar year to select the nominees to be considered by the governor for appointment to the position.

(b) ~~Public school district~~ Members of the system who are currently employed by a public school district, a charter school, or a regional education service center may have their names listed on the official ballot as candidates for nomination to a public school district position by filing an official petition bearing the signature, printed or typed name, first five digits of the member's current residential zip code, and last four digits of the ~~member's~~ Social Security numbers of 250 members of the retirement system whose most recent credited service is or was performed for a public school district, a charter school, or a regional education service center.

(c) Retirees may have their names listed on the official ballot as candidates for nomination to the retiree position by filing an official petition bearing the signature, printed or typed name, first five digits of the retiree's current residential zip code, and last four digits of the ~~retiree's~~ Social Security numbers of 250 retirees of the system.

(d) Retirees or members of the system who are currently employed by either a public school district, a charter school, a regional education service center, or an institution of higher education may have their names listed on the official ballot as candidates for nomination to the at-large position by filing an official petition bearing the signature, printed or typed name, first five digits of the signatory's current residential zip code, and last four digits of the ~~signatory's~~ Social Security numbers of 250 signatories who are retirees or who are members of the system whose most recent credited service is or was performed for an institution of higher education, ~~or for~~ a public school district, a charter school, or a regional education service center.

(e) Official petition forms, as required under subsections (b), (c), and (d) of this section, shall be available from the Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Official petitions must be received by the system by January 20 of the calendar year in which the election is to be held. If January 20 is a Saturday, Sunday or legal holiday, the filing period is extended to include the next day that is not a Saturday, Sunday or legal holiday.

(f) A qualified ~~public school district~~ member who is employed by a public school district, a charter school, a regional education service center, or an institution of higher education ~~member~~, or who is a retiree may sign more than one candidate's petition in any election in which the member or retiree, respectively, is eligible to vote. The signature of a member or retiree shall not be counted on a petition for a candidate in an election in which the member or retiree is ineligible to vote.

(g) Upon verification of petitions by the system or its designated agent, the names of qualified candidates shall be represented on the ballot. The system may designate an agent to implement and to monitor the voting process. Voting may be conducted by paper ballot or in another manner established by the board of trustees under subsection (h) of this section, including by telephone or other electronic means. Upon request by a qualified voter, the system or its designated agent shall provide the voter the means to vote for a candidate who is not represented on the ballot, and such means shall be in a manner consistent with the method by which the election is conducted. Voting instructions shall be sent on or before March 15 of the year in which the election is held to the last known home address of each active member or retiree or to an electronic mail address designated by the active member or retiree. To be counted, a completed ballot must be received by the system or its designated agent by May 5 of the year in which the election is held and in accordance with the provided voting instructions. If May 5 is a Saturday, Sunday or legal holiday, the voting period is extended to include the next day that is not a Saturday, Sunday or legal holiday. The executive director shall cause the votes to be counted. Names of

the candidates for each position receiving the three highest number of votes shall be certified by the executive director to the governor.

(h) The board of trustees may establish the manner by which the system or its designated agent conducts the election, provided that the manner of voting is secure, effective, verifiable, and is conducted using:

- (1) paper ballot;
- (2) telephone, including an automated telephone system;
- (3) electronic mail, an internet-enabled service or other application or other electronic means of transmission; or
- (4) a combination of paper ballot and one or more of the means authorized under this subsection.

(i) When a vacancy in a public school district position, at-large position, or retiree position occurs for a reason other than the expiration of a term of office, the board of trustees may conduct an election at any time ~~it~~they determines appropriate.

(j) In conducting an election under subsection (i) of this section, the board of trustees shall establish deadlines for filing petitions, the date of mailing ballots, the date for returning ballots, and any other necessary details related to the election process, and the executive director or a designee shall ensure:

- (1) that each nominee placed on the ballot for any public school district position vacancy is employed by a public school district, [a charter school, or a regional education service center](#) and has submitted an official petition consistent with subsections (b) and (e) of this section;
- (2) that each nominee placed on the ballot for any retiree position vacancy is a retiree of the system and has submitted an official petition consistent with subsections (c) and (e) of this section; and
- (3) that each nominee placed on the ballot for any at-large position vacancy is employed by a public school district, [a charter school, a regional education service center, or an](#) institution of higher education or is a retiree of the system, and has submitted an official petition consistent with subsections (d) and (e) of this section.

(k) Beginning on September 1, 2011 the higher education trustee position has been expanded and is referred to as the at-large position. If a vacancy in the institution of higher education trustee position appointed by the governor on August 30, 2011 occurs for a reason other than the expiration of the term of office, the board of trustees shall conduct an election in the same manner it would to fill any other vacancy. The executive director or a designee shall ensure each nominee placed on the ballot is a retiree or is employed by a public school district, [a charter school, a regional education service center, or an](#) institution of higher-education and that each nominee has submitted an official petition consistent with subsections (d) and (e) of this section. This subsection expires August 31, 2017 or upon the appointment of an at-large trustee, whichever occurs earlier.

(l) When more than one position on the board of trustees is being contested during the same election period, each candidate shall specify on his or her official petition which position he or she is seeking by indicating the name and expiration date of the office sought. Petitions that fail to specify the position sought shall be returned to the candidates for completion if time permits. Failure to designate a specific position by the deadline shall disqualify the candidate. When more than one position is contested during the same election period, a person may be a candidate for only one of the positions.

(m) Terms of board members run for six years and expire August 31. Terms expire on the following dates and every six years thereafter:

- (1) Public school district appointment, Place One, August 31, 2013.
- (2) Gubernatorial appointment, Place One, August 31, 2013.
- (3) State Board of Education appointment, Place One, August 31, 2013.
- (4) Public School district appointment, Place Two, August 31, 2015.
- (5) Gubernatorial appointment, Place Two, August 31, 2015.
- (6) State Board of Education appointment, Place Two, August 31, 2015.

(7) At-large appointment, formerly the Higher Education appointment, August 31, 2023. If there is a vacancy in the Higher Education appointment prior to August 31, 2017, then the remainder of the term that expires August 31, 2017 will be filled with an at-large appointment.

(8) Retiree appointment, August 31, 2017.

(9) Gubernatorial appointment, Place Three, August 31, 2017.

(10) Higher education appointment, August 31, 2017. This paragraph expires August 31, 2017 or upon the appointment of an at-large trustee, whichever occurs earlier.



Legal Services

## Memorandum

**DATE:** May 22, 2014

**TO:** Policy Committee of the Board of Trustees

**FROM:** Rebecca M. Smith, Assistant General Counsel

**COPY:** Brian Guthrie, Executive Director  
Ken Welch, Deputy Director  
Carolina de Onis, General Counsel

**RE:** Proposed Amendments to Chapter 25, relating to Membership Credit

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### REQUESTED ACTION

At its March 2014 meeting, the Policy Committee authorized publication for public comment proposed amendments to five rules and three new rules in Chapter 25, relating to Membership Credit. Specifically, the Policy Committee authorized publication of staff proposed amendments to §25.1, relating to Full-time Service; §25.25 relating to Required Deposits; §25.36, a new rule relating to Employer Payments for Members Not Covered under the Federal Old-Age, Survivors, and Disability Insurance Program; §25.37, a new rule relating to Employer Payments from Public Junior Colleges and Public Junior College Districts; §25.77 relating to USERRA Service Creditable but not Established; §25.113 relating to Transfer of Credit between TRS and ERS; §25.302 relating to Calculation of Actuarial Costs of Service Credit; and §25.303, a new rule relating to Calculation of Actuarial Cost for Purchase of Compensation Credit. The proposed amendments and new rules were published for at least 30 days 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 the comments at the meeting. The proposed amendments and new rules are before the Policy Committee now for a recommendation to the Board of Trustees regarding adoption.

### WHY THE ACTION IS REQUESTED

The proposed changes to the rules in Chapter 25 address statutory changes in the plan's terms adopted during the most recent legislative session.

Proposed changes to §25.1 clarify that employees of open enrollment charter schools or open enrollment charter holders who are performing services on behalf of the Texas open enrollment charter school are eligible for membership in TRS. The changes also reflect statutory changes and clarify that employees of a public school district performing services on behalf of a campus or program charter school and employees of open enrollment charter holders that are contracted to provide services to a

campus or program charter school are eligible for membership in TRS. The changes further clarify that employees of a management company or other entity retained by an open enrollment charter school, open enrollment charter holder, or campus or program charter school to provide services to the charter school are not eligible for membership in TRS.

Proposed changes to §25.25 reflect the increase in the member contribution rate that takes effect on September 1, 2014 and in subsequent school years. The current rule reflects the rate of 6.4 percent and the amendments reflect the increase to 6.7 percent beginning September 2014; to 7.2 percent beginning September 2015; and 7.7 percent beginning September 2016. The changes also reflect the possible reduction in the member contribution rate for service rendered on or after September 1, 2017, if the state contribution rate is reduced.

Proposed changes to §25.36 and §25.37 address the method of making the new employer contributions required for employers who are not contributing to the Federal Old-Age, Survivors, and Disability Insurance Program (Social Security) on employees eligible for TRS membership and by public junior colleges and public junior college districts on 50 percent of the compensation paid to certain instructional and administrative employees who are eligible for TRS membership and on 100 percent of compensation paid to all other employees who are eligible for TRS membership.

Proposed changes to §25.77 describe how the new five year service credit requirement will affect members who have USERRA service that was rendered on or before August 31, 2014 and who were also members on August 31, 2014.

Proposed changes to §25.113 address how TRS will administer the five years of service credit requirement when a member who has five years of service credit on August 31, 2014 and then transfers TRS service credit to ERS and retires from ERS.

## **BACKGROUND OF THE REQUESTED ACTION**

Section 25.1, relating to Full-time Service. The proposed changes to this rule reflect statutory changes adopted in HB 3357. Prior to the clarification in the statute, there was confusion regarding whether employees of an open enrollment charter holder were eligible for membership in TRS and whether employees of an open enrollment charter holder that contracted to manage a campus or program charter school were eligible for membership in TRS. With the increase in popularity of the use of an open enrollment charter holder to manage campus or program charter schools and the increased interest of the Internal Revenue Service in the appropriateness of allowing charter school employees to participate in a governmental plan, TRS felt it was prudent to seek clarification of the eligibility of these employees for membership in TRS.

HB 3357 provided the clarification needed, and the proposed amendments to §25.1 provide notice of how TRS will administer the statutory changes. In short, employees of a campus or program charter school to which employees of a school district have been assigned are eligible for membership in TRS. Employees of an open enrollment charter holder are eligible for membership in TRS if they are working at the Texas open enrollment charter school or are working at a Texas campus or program charter school under a contract for services to be provided to that campus or program charter school.

Section 25.25, relating to Required Deposits. The proposed changes to this rule reflect the graduated increase in member contribution rates adopted in SB 1458. The increase from the current rate of 6.4 percent to 6.7 percent takes effect on September 1, 2014. On September 1, 2015, the member contribution rate increases to 7.2 percent and to 7.7 percent on September 1, 2016. For service rendered on or after September 1, 2017, the member contribution rate is the lesser of 7.7 percent or a percentage of the member's annual compensation equal to 7.7 percent reduced by one-tenth of one

percent for each one-tenth of one percent that the state contribution rate is less than the state contribution rate established for the 2014-2015 school year.

Section 25.36, relating to Employer Payments for Members Not Covered under the Federal Old-Age, Survivors, and Disability Insurance Program. This section is a proposed new rule that addresses the new statutory requirement adopted in SB 1458. Except for employers that are institutions of higher education, SB 1458 requires employers who are not contributing to the Federal Old-Age, Survivors, and Disability Insurance Program (Social Security) on employees who are eligible for membership in TRS to make a 1.5 percent contribution based on salary reportable to TRS, up to the statutory minimum. For salaries that are not subject to the statutory minimum, the employer is required to make the contribution on 100 percent of the salary reportable to TRS. The rule does not include the detail provided in the statute but directs that the employer contribution must be made with the regular monthly report, that the contribution must be made based on amounts reportable to TRS, and that the employer must make records that are necessary to administer the requirement available to TRS.

Section 25.37, relating to Employer Payments from Public Junior Colleges and Public Junior College Districts. This section is a proposed new rule that addresses the new statutory requirement adopted in SB 1812 that requires employers who are public junior colleges and public junior college districts to make the state's contribution on 50 percent of the compensation paid to certain instructional and administrative employees. SB 1812 establishes the specific requirements, including that the employer must make the state's contribution on 50 percent of the compensation paid to instructional or administrative employees whose salaries may be fully paid from funds appropriated under the General Appropriations Act, regardless of whether such salaries are actually paid from the appropriated funds. The statute also provides that the number of employees on whose compensation the contribution must be made may not be increased from one biennium to the next in a proportion greater than the change in student enrollment at each college during the same reporting period. The rule further reflects the statutory requirement that the employer must also make the state's contribution on 100% of the compensation paid to all other employees who are eligible for membership in TRS. The rule does not include the detail provided in the statute but directs that the contributions from the public junior colleges and public junior college districts must be made with the regular monthly report, that the contribution must be made based on amounts reportable to TRS, and that the employer must make records that are necessary to administer the requirement available to TRS.

Section 25.77, relating to USERRA Service Creditable but not Established. The proposed changes to this rule reflect statutory changes adopted in SB 1458 changing retirement eligibility criteria for members who do not have five years of service credit on August 31, 2014. The proposed amendments clarify that USERRA service credit may be used to meet the five year requirement whether or not it is purchased, provided the following conditions are met: the person was a member of TRS on August 31, 2014; the USERRA service was rendered on or before August 31, 2014; membership is retained until the time of retirement; and the USERRA service is verified by the time of retirement.

Section 25.113, relating to Transfer of Credit between TRS and ERS. The proposed amendments to this rule reflect how TRS will administer statutory changes adopted in SB 1458 changing retirement eligibility criteria for members who do not have five years of service credit on August 31, 2014. The proposed amendments clarify that if a member has five years of service credit on August 31, 2014 but transfers TRS service credit to ERS in order to retire from ERS and later resumes membership in TRS, the member is subject to the new retirement eligibility provisions.

Section 25.302, relating to Calculation of Actuarial Costs of Service Credit. The proposed changes to this rule reflect statutory changes adopted in SB 1458 changing retirement eligibility criteria for members

who do not have five years of service credit on August 31, 2014 or who had five years of service credit on that date but do not maintain the service credit until the time of purchase. The proposed amendments address how the change in retirement eligibility requirements affect the actuarial cost to purchase service credit, and they include new cost factor tables. The proposed changes also delete language related to the cost to purchase compensation credit because that language is proposed in a new rule, §25.303. In addition to the new cost factors reflected in the tables for members who do not have five years of service credit on August 31, 2014, the cost factors for all other members are being updated based on the TRS actuary's recommendation.

Section 25.303, relating to Calculation of Actuarial Cost for Purchase of Compensation Credit. This is a proposed new rule that contains language proposed for deletion from current §25.302 relating to the calculation of actuarial costs because that rule had become very complex and addressed the costs to purchase service credit as well as compensation credit. The proposed changes to this rule include not only the language moved from §25.302 but also reflect statutory changes adopted in SB 1458 changing the retirement eligibility criteria for members who do not have five years of service credit on August 31, 2014 or who had five years of service credit on that date but do not maintain membership in TRS until the time of purchase. The proposed amendments address how the change in retirement eligibility affects the actuarial cost to purchase compensation credit, and they adopt new cost factor tables.

#### **RECOMMENDATION**

Staff recommends that 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 and adoption of the new rules proposed for 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**

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(a) Employment of a person by a TRS covered employer for one-half or more of the standard full-time work load at a rate comparable to the rate of compensation for other persons employed in similar positions is regular, full-time service eligible for membership.

(b) Any employee of a public state-supported educational institution in Texas shall be considered to meet the requirements of subsection (a) of this section if his or her customary employment is for 20 hours or more for each week and for four and one-half months or more.

(c) Membership eligibility for positions requiring a varied work schedule is based on the average of the number of hours worked per week in a calendar month and the average number of hours worked must equal or exceed one-half of the hours required for a similar full-time position.

(d) For purposes of subsection (a) of this section, full-time service is employment that is usually 40 clock hours per week. If the TRS-covered employer has established a lesser requirement for full-time employment for specified positions that is not substantially less than 40 hours per week, full-time service includes employment in those positions. In no event may full-time employment require less than 30 hours per week.

(e) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) Except as provided in subsection (j) of this section regarding adjunct faculty, if there is no equivalent full-time position of a given position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) The requirement in this subsection applies to all positions, including bus drivers.

(f) For school years prior to the 2011-2012 school year:

(1) If there is no equivalent full-time position of a given non-certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) If there is no equivalent full-time position of a given certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 20.

(3) Persons regularly employed as bus drivers for routes approved by the Transportation Department of the Texas Education Agency are eligible for membership. A person will be considered regularly employed as a bus driver if his or her customary employment requires driving at least one such route per day.

(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) For purposes of subsection (a) of this section, a rate of compensation is comparable to other persons employed in similar positions if the rate of compensation is within the range of pay established by the Board of Trustees for other similarly situated employees or is the customary rate of pay for persons employed by that employer in similar positions.

(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.

(j) Beginning on the first day of the 2013-2014 school year, the minimum number of hours required per week that will qualify an adjunct faculty position for TRS membership is 20. For purposes of this section, an adjunct faculty position is an instructor position that is filled on a semester-by-semester basis, compensated on a per class basis, and the duties include only those directly related to instruction of students.

(k) A person employed by an open enrollment charter school authorized under Subchapter D, Chapter 12, Education Code, or the open enrollment charter holder is eligible for membership in TRS if the person is performing services on behalf of the Texas open enrollment charter school and the employment otherwise meets the requirements of this section. A person employed by a management company or other entity retained by the charter school or charter holder to provide management or other services on behalf of the open enrollment charter school is not eligible for membership in TRS.

(l) A person employed by a Texas public school district and performing services on behalf of a campus or program charter school authorized under Subchapter C, Chapter 12, Education Code, is eligible for membership in TRS if the employment otherwise meets the requirements of this section. An employee of an open enrollment charter holder that is contracted to provide services to a campus or program charter school is eligible for membership in TRS if the person is performing services on behalf of the campus or program charter school and the employment otherwise meets the requirements of this section. An employee of a management company or other entity retained to provide management or other services on behalf of the campus or program charter school is not eligible for membership in TRS.

**RULE §25.25****Required Deposits**

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(a) Members shall deposit with the Teacher Retirement System of Texas 6.4% of the compensation received each pay period, including compensation received for part-time, irregular, seasonal, or temporary employment in a school year in which the member rendered service eligible for membership.

(b) Deposits due for a pay period must be deducted by the employer from the member's salary for that pay period.

(c) The employer must submit the deposits with each regular payroll report to TRS.

(d) A member employed in an eligible position or in a combination of positions that together qualifies as service eligible for membership, as defined in TRS laws and rules, must make contributions on all eligible compensation received from all TRS-covered employers.

(e) Beginning September 1, 2014, the rate of contribution for each member that must be deposited under this section is 6.7 percent of the member's annual compensation for service rendered after August 31, 2014 and before September 1, 2015; 7.2 percent of the member's annual compensation for service rendered after August 31, 2015 and before September 1, 2016; and 7.7 percent of the member's annual compensation for service rendered after August 31, 2016 and before September 1, 2017. For service rendered on or after September 1, 2017, the rate of contribution for each member shall be the lesser of 7.7 percent of the member's annual compensation or a percentage of the member's annual compensation equal to 7.7 percent reduced by one-tenth of one percent for each one-tenth of one percent that the state contribution rate for the fiscal year to which the service relates is less than the state contribution rate established for the 2014-2015 school year.

**RULE §25.36 Employer Payments for Members Not Covered under the Federal Old-Age, Survivors, and Disability Insurance Program**

(a) An employer required to make contributions under §825.4035, Government Code, shall submit the contributions and reports related to the contributions in a form required by TRS along with the regular payroll report required monthly by TRS. Upon request by TRS, an employer or an employee shall provide copies of, or otherwise make available, any records that TRS determines are necessary to administer this section.

(b) Employer contributions required under §825.4035, Government Code, shall be made based on compensation paid by the employer that is reportable to TRS.

**RULE §25.37 Employer Payments from Public Junior Colleges and Public Junior College Districts**

(a) A public junior college or public junior college district required to make contributions under §825.4071, Government Code, shall submit the contributions and reports related to the contributions in a form required by TRS along with the regular payroll report required monthly by TRS. Upon request by TRS, an employer or an employee shall provide copies of, or otherwise make available, any records that TRS determines are necessary to administer this section.

(b) Employer contributions required under §825.4071, Government Code, shall be made based on compensation paid by the employer that is reportable to TRS.

**RULE §25.77****USERRA Service Creditable but not Established**

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(a) A member who performs USERRA service creditable in the retirement system but who does not establish credit for the service by making the deposits required by this subchapter is entitled to have the USERRA service considered as if it were credited in TRS to the extent required by USERRA. To use USERRA service in this manner, the member must submit a written request to TRS before the later of the date of application for retirement or the effective date of retirement. With respect to benefits payable after the death of a member, a beneficiary must submit a written request to TRS before any part of a death benefit is paid by TRS. To use USERRA service to meet other provisions of the TRS retirement plan that are conditioned on years of TRS service credit, the member must submit a written request to TRS before action is taken under that plan provision.

(b) The USERRA service described in subsection (a) of this section is usable only in determining eligibility for, but not the amount of, service or disability retirement benefits or death benefits, and eligibility for other retirement plan features conditioned on years of service credit, but in no event shall such service be used to calculate the amount due to the member under such plan features.

(c) The USERRA service described in subsection (a) of this section is usable in determining eligibility for TRS-Care and is applicable to other provisions of TRS-Care that are based on years of TRS service credit. To use USERRA service in this manner, the member must submit a written request to TRS before the later of the date of application for retirement or the effective date of retirement.

(d) USERRA service described in subsection (a) of this section shall not be eligible for use in the manner described in this section if the member has established military service credit under §25.61 of this title (relating to Service Credit for Eligible Military Duty) for the same service or has established military service credit or USERRA credit under any other Texas public retirement system for the same service.

(e) A person who is a member on August 31, 2014 and who rendered USERRA service before September 1, 2014 may use the USERRA service in determining if the member has accrued the five years of service credit by August 31, 2014 necessary to establish eligibility to retire under the terms of the plan existing on that date, provided the person maintains membership in TRS until retirement and the USERRA service is verified before retirement.

**RULE §25.113****Transfer of Credit between TRS and ERS**

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(a) Purpose. These rules are intended to implement the provisions of the Government Code, Chapter 805, concerning the transfer of credit between the Teachers Retirement System of Texas and the Employees Retirement System of Texas and to provide a systematic method of funding the actuarial value of the annuity resulting from transferred service.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Receiving system--The system which will pay benefits based upon service credit transferred from the other system.

(2) Transferring system--The system from which service credit is transferred for the purpose of obtaining additional benefits from the other system.

(3) TRS--The Teacher Retirement System of Texas.

(4) ERS--The Employees Retirement System of Texas.

(5) Crediting system--means the system in which service credit is established prior to any transfer.

(6) ORP--The Optional Retirement Program described in Government Code, Chapter 830.

(c) Forms.

(1) Applicants for transfer must use forms prescribed by the receiving system.

(2) Applicants for the establishment of any service credit must use the forms prescribed by the crediting system.

(3) The systems will cooperate in adopting forms necessary to facilitate the exchange of information between the systems.

(d) Notice.

(1) A person electing to transfer service credit pursuant to this section must file the appropriate form with the receiving system not later than the person's intended effective date of retirement or the last day of the month in which their retirement application is filed, whichever is later.

(2) A beneficiary eligible to transfer service to the receiving system for the payment of death benefits shall make the election on an application form not later than 90 days after the date of death of the member, unless both systems agree to extend the deadline for an election, but in any event the beneficiary shall make the election before either system has paid the death benefit.

(3) The receiving system will notify the transferring system of the pending transfer not later than 30 days following date of receipt of an application form.

(e) Manner of Transfer.

(1) Service credit and funds will be transferred through electronic and hard copy documentation pursuant to this section, and the receiving system will maintain records of such transfers permanently.

(2) The transferring system shall provide documentation of years of credit, periods of service, military service credit, average salary, method of calculation of service credit and average salary, information necessary to comply with all federal tax regulations, interest credited, fees and interest paid, and any other dollar amount which will be a part of the transfer.

(f) Transfer of funds. The ERS and the TRS agree on the following method of transferring funds. Each system shall certify on a monthly basis the total dollar amount of annuities paid by the system which are based on service credit transferred pursuant to Government Code, Chapter 805. The amount certified shall exclude any portion of annuities paid consisting of post-retirement increases. Each system shall remit to the other system the amount certified within thirty days of receipt of such certification. It is recognized that adjustments will be made from month-to-month as a result of such things as administrative errors, the death of the annuitant or a beneficiary, return-to-work, and recovery from disability by an annuitant. The systems will jointly agree on the administrative and accounting procedures to be established in order to ensure the transfer of funds pursuant to this section.

(g) Reinstatement of withdrawn service credit.

(1) An ERS member with at least 36 months service credit in ERS may reinstate service credit in TRS that was canceled by the person's withdrawal of a TRS membership account.

(2) Such reinstatement of TRS credit shall be in the amounts and rates applicable to TRS members eligible to repurchase such credit.

(3) A TRS member with three years' service credit may reinstate, through ERS, service credit canceled by withdrawal of an ERS membership account.

(4) No service credit may be transferred based in whole or in part upon reinstated credit under this section unless the applicant meets all conditions for membership, amount of service credit, and payments required for the reinstatement of the credit.

(5) Any TRS membership service credit reinstated under this subsection may be applied toward the service credit requirements of TRS laws and rules for the purchase of out-of-state, military or other special service credit.

(h) Termination of membership. The transfer of TRS service credit to ERS will terminate TRS membership and cancel all rights to benefits from TRS based on that service.

(i) Service in the month following retirement. Both TRS and ERS laws require a separation from employment with any employer covered by the respective system for a period following a member's effective retirement date as a condition for retirement with a benefit from the respective system. A member retiring under TRS whose last place of employment is with an ERS-covered employer shall provide a certification of termination of employment to TRS in the manner directed by the retirement system, specifying the last date of employment. With respect to a service or disability retirement by persons using credit transferred between the systems, the following provisions apply:

(1) An ERS retiree whose last place of employment is with a TRS-covered employer must be off the payroll of any TRS-covered employer for the first full calendar month following retirement under ERS, or the ERS retirement will be canceled. A TRS retiree whose last place of employment is with an ERS-covered employer must be off the payroll of any ERS-covered employer for the first full calendar month following retirement under the TRS, or the TRS retirement will be canceled.

(2) An ERS retiree whose last place of employment is with an ERS-covered employer may begin work for a TRS-covered employer after retirement under ERS without a one month break in service. A retiree from the TRS whose last place of employment is with a TRS-covered employer may begin work for an ERS-covered employer after retirement under TRS without a one month break in service.

(j) Average salary.

(1) In determining average salary used in computing benefits available to a person transferring credit under this section, the receiving system will use the higher of the average salary derived solely from the service originally established in each system respectively. In comparing average salaries and determining benefits payable, the receiving system shall accept the transferring system's determination of its average salary, applying all laws and policies of the transferring system in the calculation of that system's average salary.

(2) Each system will be responsible for determining its respective average salary. The transferring system will certify its average salary to the receiving system.

(3) If there is less service than is required in the applicable formula to compute the average salary in TRS under the laws and rules applicable to that system, the average salary will be computed using salaries for the service for which credit was established. This average salary shall be used in the comparison of average salaries to determine which system's average salary is higher.

(k) Transfer of Certain State Employees to ERS.

(1) Certain state employees have been transferred to ERS membership as a result of legislation enacted by the 73rd Texas Legislature, Regular Session. Among these are employees of the Texas Education Agency, employees of the Texas Surplus Property Agency transferred to the General Services

Commission, some employees of the Texas Rehabilitation Commission, the Texas School for the Deaf, the Texas School for the Blind, the Higher Education Coordinating Board, [and](#) the Texas Youth Commission. Such employees are eligible to transfer TRS credit to ERS for benefit purposes under the Government Code, Chapter 805 subject to the modifications contained in this section.

(2) Employees whose agencies have been transferred to ERS coverage, including the Texas Education Agency and the Texas Rehabilitation Commission, the Texas School for the Deaf, the Texas School for the Blind, the Higher Education Coordinating Board, and the Texas Youth Commission, may not retire under TRS after the effective date of the transfer, unless they again become TRS members based on other employment and subsequently obtain TRS service credit qualifying them for TRS retirement, except as provided for in Government Code, §805.002(a).

(3) Employees described in paragraph (1) of this subsection are not eligible for TRS death benefits other than a return of accumulated contributions.

(4) Notwithstanding subsection (j) of this section, the average compensation of employees described in paragraph (1) of this subsection qualifying for ERS benefits may be determined by combining monthly rates of pay while a TRS member with ERS credited monthly salary to obtain the highest 36 months of pay.

(l) Death benefits. Service credit of a person may not be transferred between systems if:

(1) one of the systems has paid or begun to pay death benefits based on the person's account; or

(2) the beneficiaries for death benefits in each system are not identical. However, when only reinstated service is being transferred and no beneficiary designation was made at or after the time of reinstatement, a transfer will be allowed.

(m) Service credit.

(1) TRS will make and accept transfers of service credit in whole plan year increments based upon TRS rules for crediting service. No partial years will be transferred.

(2) TRS and ERS service in a plan year will not be combined to obtain a year of TRS service credit.

(3) A person who transfers credit to TRS or ERS may not receive more than a total of five years of service credit for military service. The retirement system from which credit is transferred may refund contributions made for military service, other than any amount that represents a fee, that exceeds the maximum amount creditable. A person who retires under Government Code, Chapter 805, who returns to work under TRS or ERS may not purchase additional military service credit if the purchase would cause the total of all military service credit to exceed five years.

(4) A person who purchased out of state service credit before retirement under Government Code, Chapter 805, may not purchase additional out of state service credit upon return to work under TRS if the purchase would cause the total of all out of state service credit to exceed fifteen years.

(n) ORP participants. A person who has elected to participate in ORP but who is an ERS member may repurchase TRS service credit canceled by the election of ORP for purpose of transferring it to ERS under the Government Code, Chapter 805, provided TRS will not transfer or pay benefits for such service credit if the member actively participates in ORP between the date the TRS service credit is purchased and the date of the member's retirement or death. TRS will refund without interest any amounts deposited for such credit in the event the person returns to active ORP participation. The person must agree to refund the amount of any benefits erroneously paid to the person as a result of any such return to ORP.

(o) Return to TRS covered employment.

(1) A person who transferred service to ERS and retired under Government Code, Chapter 805, and who returns to employment in a position eligible for TRS membership continues to be governed by the provisions of state law as described under §51.12(a) of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) upon resumption of TRS membership, if, while a member of TRS, the person met at least one of the requirements of §51.12(a) of this title by August 31, 2005.

(2) Regardless of status under paragraph (1) of this subsection, a person who transferred service to ERS and retired under Government Code, Chapter 805, and who returns to employment in a position eligible for TRS membership after August 31, 2007, is subject to the provisions of Government Code §824.202(a-1) and (d-1) and §29.1(a) of this title (relating to Eligibility for Service Retirement) for eligibility for retirement under TRS.

(3) A person who has at least five years of TRS service credit on August 31, 2014 and transfers that service credit to ERS, retires from ERS under Government Code, Chapter 805, and returns after September 1, 2014 to employment in a position eligible for TRS membership is subject to the provisions of Government Code §824.202(a-2), (b-2), and (d-2) and §29.1(e) of this title (relating to Eligibility for Service Retirement).

**RULE §25.302****Calculation of Actuarial Cost of Service Credit**

(a) When a member is purchasing TRS service credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the [cost factors obtained from the Actuarial Cost Tables adopted](#) and method described in [subsections \(b\), \(c\), \(d\), and \(e\)](#) of this section.

(b) ~~To calculate the actuarial cost of additional service credit, TRS will use the cost factors obtained from the Actuarial Cost Tables furnished by the TRS actuary of record.~~ The factors for individuals whose membership was established before September 1, 2007 [and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase](#), are shown in the tables adopted as part of this subsection, which shall be used when the service credit cost is paid on or after September 1, 2012, or an installment agreement is entered into on or after September 1, 2012. ~~The factors for individuals whose membership was established on or after September 1, 2007 are shown in the tables described in subsection (d) of this section.~~ Within each set of tables, the number of years of service credit to be purchased will determine which specific table will be used. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per \$1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the [participant's](#) salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The tables set forth the cost, per \$1,000 of salary, to purchase from one year to fifteen years of service credit. The number of years of service credit available for purchase is determined by the laws and rules applicable to the type of service credit to be purchased. For the purpose of calculating the required amount for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows: (1) For the upper region of the table (where the factors appear above the line), salary is the greater of current annual salary or the average of the member's highest years of compensation, with either two or three years of compensation used for the average, depending on whether the member has only two years or has three or more years of service credit at the time of the calculation; or (2) For the lower region of the table (where the factors appear below the line), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of the table (where the factors appear below the line) reflects those age and service combinations where the purchase of service credit results in immediate eligibility of the member for unreduced retirement benefits.

[Figure: 34 TAC §25.302\(b\)](#)

(c) For the purpose of calculation of actuarial cost for service credit for a member [described in subsection \(b\) of this section](#) who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (b) of this section when a factor in the upper region of the table is used.

(d) For individuals whose membership was established on or after September 1, 2007 [and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase](#), the methodology described in subsection (b) of this section shall be used to determine cost of additional service credit, but ~~TRS the retirement system~~ shall use the factors in the tables adopted as part of this subsection, which shall be used when the service credit cost is paid on or after September 1, 2012, or an

installment agreement is entered into on or after September 1, 2012. If the member is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average.

[Figure: 34 TAC §25.302\(d\)](#)

(e) If an individual established membership on or after September 1, 2007 [and has five years of service credit on August 31, 2014 and maintains membership in TRS until the time of purchase](#), but is grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section. The cost of establishing additional service credit for a grandfathered member [described in this subsection who established membership on or after September 1, 2007](#), shall be 1.04 times the cost as calculated under subsection (d) of this section when a factor in the upper region of the table is used.

(f) An individual who first was a member of TRS before September 1, 2007, but who terminated membership through withdrawal of accumulated contributions and then again joined TRS on or after September 1, 2007 [and has five years of service credit on August 31, 2014 and maintains membership in TRS until the time of purchase](#), is subject to the calculation of cost for additional service credit under subsections (d) and (e) of this section.

~~(g) When a member is purchasing TRS compensation credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the tables and method described in subsections (h), (i), and (j) of this section.~~

~~(h) To calculate the actuarial cost of additional compensation credit, TRS will use the cost factors obtained from the actuarial cost tables furnished by the TRS actuary of record. The factors for individuals whose membership was established before September 1, 2007, are shown in the tables adopted as part of subsection (i) of this section. The factors for individuals whose membership was established on or after September 1, 2007, are shown in the tables described in subsection (j) of this section. Each of the tables cross-references the member's age in rows with years of credited service in columns. The intersection of the participant's age and service is the cost factor that shall be applied to the additional final average compensation that may result from the purchase. TRS will calculate the cost to purchase compensation credit under this section by dividing the additional compensation by three or five years, as determined by the standard annuity calculation applicable to the member, and dividing that quotient by 1,000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The eligibility of additional compensation credit available for purchase is determined by the laws and rules applicable to the type of compensation sought to be credited.~~

~~(i) For individuals whose membership was established before September 1, 2007, the methodology described in subsection (h) of this section shall be used to determine cost of additional compensation credit, but the retirement system shall use the factors in the tables adopted as part of this subsection.~~

~~Figure: 34 TAC §25.302(i)~~

~~(j) For individuals whose membership was established on or after September 1, 2007, the methodology described in subsection (h) of this section shall be used to determine cost of additional compensation credit, but the retirement system shall use the factors in the tables adopted as part of this subsection.~~

~~Figure: 34 TAC §25.302(j)~~

(gk) For the cost calculations described in subsections (b) and (d) of this section, when the cost is calculated for a purchase that is paid in full before September 1, 2012, or for a purchase for which an installment agreement is entered into before September 1, 2012, the factors in the tables adopted as part of this subsection shall be used.

[Figure: 34 TAC §25.302\(g\)\(1\)](#)

[Figure: 34 TAC §25.302\(g\)\(2\)](#)

Figure: 34 TAC §25.302(k)(1)

Figure: 34 TAC §25.302(k)(2)

(h) Effective September 1, 2014, for members who do not have five years of service credit on August 31, 2014 or whose current membership began after August 31, 2014, the methodology described in subsections (b) and(c) of this section shall be used to determine the cost of additional service credit, but TRS shall use the factors in the tables adopted as a part of this subsection.

Figure: 34 TAC §25.302(h)

(i) For the purpose of calculation of actuarial cost for service credit for a member described in subsection (h) of this section who is not grandfathered to use a three-year salary average, the term “salary” shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average.

(j) If the individual did not have five years of service credit on August 31, 2014 or whose current membership began after August 31, 2014 but is grandfathered to use a three-year salary average, the term “salary” shall have the same meaning as in subsection (b) of this section. The cost of establishing additional service credit for a grandfathered member described in this subsection shall be 1.04 times the cost as calculated under subsection (h) of this section when a factor in the upper region of the table is used.

(a) When a member is purchasing TRS compensation credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the cost factors obtained from the Actuarial Cost Tables adopted and the method described in this section.

(b) Each of the tables cross-references the member's age in rows with years of credited service in columns. The intersection of the participant's age and service is the cost factor that shall be applied to the additional final average salary that may result from the purchase. TRS will calculate the cost to purchase compensation credit under this section by dividing the additional compensation by three or five years, as determined by the standard annuity calculation applicable to the member, and dividing that quotient by 1,000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The eligibility of additional compensation credit available for purchase is determined by the laws and rules applicable to the type of compensation sought to be credited.

(c) For individuals whose membership was established before September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, the methodology described in subsection (b) of this section shall be used to determine cost of additional compensation credit, but TRS shall use the factors in the tables adopted as part of this subsection.

Figure: 34 TAC §25.303(c)

(d) For individuals whose membership was established on or after September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, the methodology described in subsection (b) of this section shall be used to determine cost of additional compensation credit, but TRS shall use the factors in the tables adopted as part of this subsection.

Figure: 34 TAC §25.303(d)

(e) Effective September 1, 2014, for members who do not have five years of service credit on August 31, 2014 or whose current membership began after August 31, 2014, the methodology described in subsection (b) of this section shall be used to determine the cost of additional compensation credit, but TRS shall use the factors in the tables adopted as a part of this subsection.

Figure: 34 TAC §25.303(e)

(f) If the member described in subsection (e) of this section is grandfathered to use a three-year salary average, the cost of establishing additional compensation credit shall be 1.04 times the cost as calculated under subsection (e) of this section when a factor in the upper region of the table is used.



Legal Services

## Memorandum

**DATE:** May 22, 2014

**TO:** Policy Committee of the Board of Trustees

**FROM:** Rebecca M. Smith, Assistant General Counsel

**COPY:** Brian Guthrie, Executive Director  
Ken Welch, Deputy Director  
Carolina de Onís, General Counsel

**RE:** Proposed Amendments to Chapter 27, relating to Termination of Membership and Refunds

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### REQUESTED ACTION

At its March 2014 meeting, the Policy Committee authorized publication for public comment proposed amendments to one rule in Chapter 27, relating to Termination of Membership and Refunds. Specifically, the proposed changes are to §27.5, relating to Termination of Right to Benefits. The proposed amendments were published for at least 30 days 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 the comments at the meeting. The proposed amendments and new rules are before the Policy Committee now for a recommendation to the Board of Trustees regarding adoption.

### WHY THE ACTION IS REQUESTED

The proposed rule change to §27.5 describes how TRS will administer the statutory change in SB 1458 related to retirement eligibility criteria for members who have five years of service credit on August 31, 2014 but terminate membership and withdraw the account and later resume membership in TRS and reinstate the account.

### BACKGROUND OF THE REQUESTED ACTION

Section 27.5, relating to Termination of Right to Benefits. The changes in retirement eligibility requirements established in SB 1458 do not specifically address how the new requirements will be applied to a reinstated account. With the change in the retirement eligibility for members who do not have five years of service credit on August 31, 2014 or who have five years of service credit on that date but subsequently terminate membership and withdraw the account, it is important to communicate to members how TRS will administer the change in the law when the account is reinstated. The proposed

amendments clarify that if a member has five years of service credit on August 31, 2014 but terminates membership in TRS by withdrawing the account and later resumes membership and reinstates the account, the member is subject to the new retirement eligibility provisions, i.e., the member does not retain his/her former tier status.

**RECOMMENDATION**

Staff recommends that the Policy Committee of the Board of Trustees consider recommending to the Board of Trustees the adoption of the amendments to §27.5, relating to Termination of Right to Benefits, as outlined herein and without changes to the text as published in the *Texas Register* for public comment.

**RULE §27.5****Termination of Right to Benefits**

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Withdrawal of an account terminates the right to benefits for all service prior to the date of withdrawal, unless credit is reinstated as provided by the retirement law. [However, if a member has five years of service credit on or before August 31, 2014 but terminates membership by withdrawal and resumes membership on or after September 1, 2014 and reinstates the withdrawn service credit, the member is subject to the provisions of Government Code §824.202\(a-2\), \(b-2\), and \(d-2\) and §29.1\(e\) of this title \(relating to Eligibility for Service Retirement\).](#)



Legal Services

## Memorandum

**DATE:** May 22, 2014

**TO:** Policy Committee of the Board of Trustees

**FROM:** Rebecca M. Smith, Assistant General Counsel

**COPY:** Brian Guthrie, Executive Director  
Ken Welch, Deputy Director  
Carolina de Onís, General Counsel

**RE:** Proposed Amendments to Chapter 29, relating to Benefits

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### REQUESTED ACTION

At its March 2014 meeting, the Policy Committee authorized publication for public comment proposed amendments to one rule and proposed amendments to the actuarial tables in another rule in Chapter 29, relating to Benefits. Specifically, the proposed changes are to §29.1, relating to Eligibility for Service Retirement. The proposed changes would also update certain actuarial tables regarding early age reductions and adopt new actuarial tables for early age reductions for members who do not have five years of service credit on August 31, 2014 or who had five years of service credit on that date but do not maintain that service credit until retirement in §29.11, relating to Actuarial Tables. The proposed amendments were published for at least 30 days 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 the comments at the meeting. The proposed amendments and new rules are before the Policy Committee now for a recommendation to the Board of Trustees regarding adoption.

### WHY THE ACTION IS REQUESTED

The proposed rule changes to §29.1 state how TRS will administer the statutory changes in SB 1458 related to retirement eligibility criteria and the requirement to have the five years of service credit on August 31, 2014. The changes are significant and the statute does not specifically address what eligibility criteria will be applied to members who meet the five year requirement but later terminate and resume membership. Staff proposes the changes to give notice to members of how TRS will administer the law. The proposed changes provide which retirement eligibility criteria will apply to members in the following situations: those who became members after September 1, 2007 but who have the required five years of service credit on August 31, 2014; those who were members before September 1, 2007 but terminated membership and returned to membership after September 1, 2007

but have the required five years of service credit on August 31, 2014; and those who do not have five years of service credit on August 31, 2014 or who had five years of service credit on that date and terminated membership in TRS and later resume membership and reinstate the account.

#### **BACKGROUND OF THE REQUESTED ACTION**

Section 29.1, relating to Eligibility for Service Retirement. The change in retirement eligibility requirements established in SB 1458 do not specifically address how the new requirements will be applied when a member initially meets the five year requirement but later terminates and resumes membership at a later date. With the change in the retirement eligibility for members who do not have five years of service credit on August 31, 2014 or who have five years of service credit on that date but subsequently terminate membership and withdraw the account, it is important to communicate to members how TRS will administer the change in the law when the account is reinstated. The proposed amendments clarify that if a member has five years of service credit on August 31, 2014 but terminates membership in TRS by withdrawing the account and later resumes membership and reinstates the account, the member is subject to the new retirement eligibility provisions, i.e., the member does not retain his/her former tier status.

Section 29.11, relating to Actuarial Tables. Proposed changes to this rule are included only in the actuarial tables in subsection (b). In the course of reviewing the actuarial tables that may have been affected by statutory changes authorized in SB 1458, staff discovered an error in one of the early age reduction tables. Rather than a 2 percent reduction for each year a member had at least 30 years of service credit but was less than age 50, the error resulted in a 2 percent reduction for each year a member had at least 30 years of service credit but did not meet rule of 80. Staff is proposing the adoption of an amended table that correctly reflects the required statutory deduction.

Also, new actuarial tables are needed to address early age reduction factors for members who did not have five years of service credit on August 31, 2014 or who had five years of service credit on that date but did not maintain their membership after that date and are now subject to the new retirement eligibility requirements. The tables address the reductions applicable under the following conditions: to a member who is required to meet the new retirement eligibility standards and has at least 30 years of service credit but is less than age 62; to a member who is required to meet the new retirement eligibility standards and meets the rule of 80 with at least five years of service credit but is less than age 62; and to a member who is required to meet the new retirement eligibility standards but does not meet rule of 80, does not have at least 30 years of service credit, but has at least 5 years of service credit and is at least 55 years of age.

#### **RECOMMENDATION**

Staff recommends that the Policy Committee of the Board of Trustees consider recommending to the Board of Trustees the adoption of the amendments to one rule and actuarial tables in another rule in Chapter 29, as outlined herein and without changes to the text as published in the *Texas Register* for public comment.

**RULE §29.1****Eligibility for Service Retirement**

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(a) The provisions of subsections (a-1) and (b-1) of §824.202, Texas Government Code, apply only to a person who becomes a member of the retirement system on or after September 1, 2007 [and before September 1, 2014 and who has at least five years of service credit in TRS on or before August 31, 2014 and maintains that service credit in TRS until retirement.](#)

(b) A member who met at least one of the requirements of §51.12(a) of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) on or before August 31, 2005, while a member of the Teacher Retirement System before termination of membership through withdrawal of member contributions or absence from service shall be considered as continuing to be eligible to be governed by provisions of state law as described under §51.12(a) of this title upon resumption of membership on or after September 1, 2007.

(c) A person who was a member of the retirement system before September 1, 2007, but who terminates membership through withdrawal of accumulated contributions, then resumes membership on or after September 1, 2007 [and before September 1, 2014 and who has at least five years of service credit in TRS on or before August 31, 2014 and maintains that service credit in TRS until retirement,](#) is subject to the provisions of subsections (a-1), (b-1), and (d-1) of §824.202, Texas Government Code, regardless of whether the withdrawn service credit is reinstated.

(d) The eligibility for service retirement of a member who terminates membership due to absence from service without withdrawal of contributions and reactivates the account under §823.501(f), Texas Government Code, on or after September 1, 2007, shall be determined based on the earliest date of service associated with the account.

[\(e\) A member who does not have at least five years of service credit in TRS on or before August 31, 2014 is eligible for retirement under the provisions of §824.202 \(a-2\), \(b-2\), and \(d-2\), Texas Government Code. A member who has at least five years of service credit in TRS on or before August 31, 2014 but terminates membership in TRS by withdrawal of accumulated contributions after August 31, 2014 and later resumes membership in TRS on or after September 1, 2014 is also subject to §824.202 \(a-2\), \(b-2\), and \(d-2\), Texas Government Code, regardless of whether the withdrawn service credit is reinstated.](#)

## **RULE §29.11 Actuarial Tables**

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(a) Actuarial tables furnished by the TRS actuary of record will be used for computation of benefits. Factors for ages or types of annuities not included in the tables will be computed from the same data by the same general formulas.

(b) The Teacher Retirement System adopts the actuary's June 1997 early age reduction factors based on 8.0% interest, with modifications to the early age reduction factor table to reflect the amendment of Government Code §824.202 effective September 1, 2005, including the repeal of §824.202(c). These actuarial tables shall be effective beginning September 1, 1997, except for the early age reduction factor modifications, which shall be effective September 1, 2005. The factor tables are as follows:

[Figure: 34 TAC §29.11\(b\)](#)

(c) The Teacher Retirement System adopts the actuary's June 1997 factors for service retirement options based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1997. The factor tables are as follows:

Figure: 34 TAC §29.11(c)

(d) The Teacher Retirement System adopts the actuary's June 1997 factors for disabled member retirement options based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1997. The factor tables are as follows:

Figure: 34 TAC §29.11(d)

(e) The Teacher Retirement System adopts the actuary's reserve transfer factors effective beginning September 1, 1991, based on 8.0% interest. The reserve transfer factor tables are as follows:

Figure: 34 TAC §29.11(e)

(f) The board of trustees may change the tables or adopt new tables from time to time by amending this section; provided, however, that any such change does not result in any retiree or member eligible for service retirement with an unreduced annuity as of the date of the change receiving a smaller benefit than the benefit computed immediately before the change.



Legal Services

## Memorandum

**DATE:** May 22, 2014

**TO:** Policy Committee of the Board of Trustees

**FROM:** Rebecca M. Smith, Assistant General Counsel

**COPY:** Brian Guthrie, Executive Director  
Ken Welch, Deputy Director  
Carolina de Onís, General Counsel

**RE:** Proposed Amendments to Chapter 43, relating to Contested Cases

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### REQUESTED ACTION

At its March 2014 meeting, the Policy Committee authorized publication for public comment proposed amendments to one rule in Chapter 43 relating to Contested Cases. Specifically, the proposed changes are to §43.43, relating to Subpoenas and Commissions. The proposed amendments were published for at least 30 days 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 the comments at the meeting. The proposed amendments and new rules are before the Policy Committee now for a recommendation to the Board of Trustees regarding adoption.

### WHY THE ACTION IS REQUESTED

The proposed changes to §43.43 address the protection given in HB 3357 to doctors serving on the TRS Medical Board. Specifically, HB 3357 provides that members of the TRS Medical Board are not subject to a subpoena regarding matters referred to them by TRS. Because the rules of the State Office of Administrative Hearings appear to authorize the issuance of a subpoena to compel the testimony of a witness and do not provide for a specific exemption, it is important for TRS rules to reflect this protection.

### BACKGROUND OF THE REQUESTED ACTION

Section 43.43, relating to Subpoenas and Commissions. While TRS has not recently received an administrative appeal regarding a decision by the TRS Medical Board, the potential for an appeal and a request that TRS issue a subpoena to compel the testimony of one of the members of the Medical Board regarding the basis for decision not to certify a disability is a viable one. Other retirement systems, including ERS, frequently receive administrative appeals regarding disability matters, and adopting the

proposed amendment clarifies that a member of the TRS Medical Board cannot be required to give testimony in an administrative hearing.

**RECOMMENDATION**

Staff recommends that the Policy Committee of the Board of Trustees consider recommending to the Board of Trustees the adoption of the amendments to §43.43, relating to Subpoenas and Commissions, as outlined herein and without changes to the text as published in the *Texas Register* for public comment.

**RULE §43.43****Subpoenas and Commissions**

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(a) [Except as provided in subsection \(d\) of this section,](#) the issuance of a subpoena in any proceeding shall be governed by the Administrative Procedure Act, Government Code, §2001.089. Upon a written request by a party showing good cause and payment of required fees, or upon the request of the executive director, board of trustees, or administrative law judge, TRS may issue a subpoena addressed to the sheriff or a constable to require the attendance of witnesses or the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a hearing.

(b) The issuance of a commission in any proceeding shall be governed by the Administrative Procedure Act, Government Code, §2001.094. Upon a written motion of a party and payment of required fees, or on the request of the administrative law judge, the executive director, or the board of trustees, TRS may issue a commission addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken.

(c) Subpoenas and commissions shall be issued by the executive director only after a deposit of sums sufficient to ensure payment of expenses incident to the subpoenas. Payment of witness fees shall be made in the manner prescribed in the Administrative Procedure Act, Government Code, §2001.103.

[\(d\) Members of the Medical Board may not be the subject of a subpoena regarding findings or determinations made in assisting the executive director or the board of trustees in all matters referred to it.](#)



Legal Services

## Memorandum

**DATE:** May 22, 2014

**TO:** Policy Committee of the Board of Trustees

**FROM:** Rebecca M. Smith, Assistant General Counsel

**COPY:** Brian Guthrie, Executive Director  
Ken Welch, Deputy Director  
Carolina de Onís, General Counsel

**RE:** Proposed New Rule in Chapter 51, relating to General Administration

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### REQUESTED ACTION

At its March 2014 meeting, the Policy Committee authorized publication for public comment one proposed new rule in Chapter 51, relating to General Administration. Specifically, the proposed rule is new §51.13, relating to Five-Year Service Credit Requirement Effective August 31, 2014. The proposed new rule was published for at least 30 days 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 the comments at the meeting. The proposed amendments and new rules are before the Policy Committee now for a recommendation to the Board of Trustees regarding adoption.

### WHY THE ACTION IS REQUESTED

Proposed new §51.13 states how TRS will administer the statutory changes in SB 1458 related to retirement eligibility and the requirement to have five years of service credit on August 31, 2014. The changes to eligibility are significant and the statute does not specifically address all of the different scenarios that may apply when applying the five-year requirement. The proposed new rule would give notice to members of how TRS will administer the law, including how the deadline for establishing service credit to meet the requirement will be counted, how eligible USERRA service may be utilized, and how ERS service credit and proportionate service credit established with other retirement systems participating in the program may be used to meet the requirement.

### BACKGROUND OF THE REQUESTED ACTION

Section 51.13, relating to Five-Year Service Credit Requirement Effective August 31, 2014. Because the changes in retirement eligibility requirements established in SB 1458 do not specifically address how the new requirements will be administered, it is important to address interpretations of the law by TRS that could affect a member's decision to retain membership or to purchase service credit in order to meet

the August 31, 2014 deadline. The proposed new rule addresses how USERRA service may be verified but not purchased and used in meeting the five years of service credit requirement. It also notifies members that the August 31, 2014 deadline is the deadline for completing the purchase of service credit to be used in establishing the five years of service credit by that date. Subsection (c) of the new rule explains how TRS will extend the August 31, 2014 deadline, which falls on the Saturday before Labor Day, until 11:59 p.m. on Tuesday September 2, 2014. That subsection also explains how TRS will calculate the deadline for members who do not receive the bill for the purchase of service credit in time to purchase the service credit by the deadline. The new rule also addresses how a member may use ERS service credit that was established before September 1, 2014 to meet the five-year requirement if the person was a member of TRS on August 31, 2014. It also addresses how combined service credit with another retirement system participating in the Proportionate Retirement Program may be used to meet the five-year requirement.

#### **RECOMMENDATION**

Staff recommends that the Policy Committee of the Board of Trustees consider recommending to the Board of Trustees the adoption of the proposed new rule in Chapter 51, as outlined herein and without changes to the text as published in the *Texas Register* for public comment.

(a) A member with less than five years of service credit on August 31, 2014 and/or a person whose membership begins on or after September 1, 2014, must meet the requirements of ~~§Section~~ 824.202(a-2), Government Code, to be eligible for a standard service retirement annuity.

(b) An eligible member may purchase any withdrawn, unreported, waiting period, and/or USERRA service credit in order to meet the five years of service credit requirement. Except as provided in subsection (c) of this section, the purchase of any withdrawn service credit must be completed, i.e. amount required to purchase the service credit paid in full, by August 31, 2014. If the purchase of service credit includes any years of service credit that may be purchased one year at a time, only the amount required to purchase the number of years of service credit needed to meet the five years of service credit requirement must be paid in full by August 31, 2014.

(c) An eligible member seeking to purchase service credit in order to meet the five years of service credit requirement must submit a request to purchase the service credit to TRS. The request to purchase the service credit and all documentation required to establish eligibility to purchase the service credit must be received by TRS before 12:00 a.m. on September 3, 2014. A member meeting this requirement will be given until the later of 11:59 p.m. on September 2, 2014 or a 30-day period from the date TRS mails the bill for the purchase of service credit to submit full payment for the service credit to be used in meeting the five years of service credit requirement.

(d) A member who meets the five years of service credit requirement on August 31, 2014 or as described in subsection (c) of this section, but terminates membership by withdrawal of accumulated contributions after that date and later resumes membership in TRS must meet the requirements of ~~§Section~~ 824.202(a-2), Government Code, to be eligible for a standard service retirement annuity.

(e) A person who was a member of TRS on August 31, 2014 and who has verified but not purchased USERRA service credit for eligible military service performed before September 1, 2014 may use the USERRA service credit to meet the five years of service credit requirement provided membership is maintained until retirement. The USERRA service may be verified any time before retirement.

(f) A person who is a member of TRS on August 31, 2014 and who has service credited on August 31, 2014 in the Employees Retirement System of Texas (ERS) or another retirement system participating in the Proportionate Retirement Program established in Chapter 803, Government Code and maintains the combined service credit until retirement, may use the combined service credit to meet the five years of service credit requirement described in this section.



## Teacher Retirement System of Texas

### BOARD OF TRUSTEES ORDER ADOPTING

Amended §§ 23.5, 25.1, 25.25, 25.77, 25.113, 25.302, 27.5,  
29.1, 29.11, and 43.43, and  
New §§ 25.36, 25.37, 25.303, and 51.13.

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) has decided to adopt amended TRS Rules 34 Tex. Admin. Code §§ 23.5, 25.1, 25.25, 25.77, 25.113, 25.302, 27.5, 29.1, 29.11, and 43.43, and new §§ 25.36, 25.37, 25.303, and 51.13, as set out below. The proposed rules were published for public comment in the April 25, 2014 issue of the *Texas Register* (39 TexReg 3376-3389) for 30 days before being considered for adoption. *No public comments were received in response to the published notice of the proposed amendments. The board has decided to adopt the amended and new rules without changes to the published text of the proposed rules.*

#### **§ 23.5**

Amended §23.5, relating to nomination for appointment to the board, is located in Chapter 23 (Administrative Procedures) of TRS' rules. In the 2013 legislative session, the Legislature clarified how members employed by charter schools and regional education service centers may participate in the nomination of candidates to serve on the TRS Board of Trustees. Amended § 23.5 reflects the statutory changes that expressly authorize employees of charter schools and regional education service centers to nominate, pursue nomination, and vote for candidates for the public school district position of the Board of Trustees.

#### **§§ 25.1, 25.25, 25.36, 25.37, 25.77, 25.113, 25.302, and 25.303**

Sections 25.1, 25.25, 25.77, 25.113, and 25.302, are located in Chapter 25 (Membership Credit) of TRS' rules. New §§25.36, 25.37, and 25.303 will be added to Chapter 25.

Amended §25.1, relating to Full-time Service, reflects statutory changes adopted in HB 3357. HB 3357 (2013) provided the clarification needed regarding whether employees of an open enrollment charter holder were eligible for membership in TRS and whether employees of an open enrollment charter holder that contracted to manage a campus or program charter school were eligible for membership in TRS. The amendments to §25.1 provide notice of how TRS will administer the statutory changes. In short,

employees of a campus or program charter school to which employees of a school district are assigned, are eligible for membership in TRS. Employees of an open enrollment charter holder are eligible for membership in TRS if they are working at the Texas open enrollment charter school or are working at a Texas campus or program charter school under a contract for services to be provided by an open enrollment charter holder to that campus or program charter school.

Amended §25.25, relating to Required Deposits, reflects the graduated increase in member contribution rates adopted in SB 1458 (2013). The increase from the current rate of 6.4 percent to 6.7 percent takes effect on September 1, 2014. On September 1, 2015, the member contribution rate increases to 7.2 percent and to 7.7 percent on September 1, 2016. For service rendered on or after September 1, 2017, the member contribution rate is the lesser of 7.7 percent or a percentage of the member's annual compensation equal to 7.7 percent reduced by one-tenth of one percent for each one-tenth of one percent that the state contribution rate is less than the state contribution rate established for the 2014-2015 school year.

New §25.36, relating to Employer Payments for Members Not Covered under the Federal Old-Age, Survivors, and Disability Insurance Program, addresses the new statutory requirement adopted in SB 1458 (2013). Except for employers that are institutions of higher education, SB 1458 requires employers that are not contributing to the Federal Old-Age, Survivors, and Disability Insurance Program (Social Security) on behalf of employees who are eligible for membership in TRS to make a 1.5 percent contribution based on salary reportable to TRS, up to the statutory minimum. SB 1458 further provides that the employer must continue to make the state contribution on amounts paid that are above the statutory minimum. For salaries that are not subject to a statutory minimum, the employer is required to make the contribution on 100 percent of the salary reportable to TRS. The rule does not duplicate the detail provided in the statute but directs that the employer contribution must be made with the regular monthly report, that the contribution must be made based on amounts reportable to TRS, and that the employer must make available to TRS records that are necessary to administer the requirement.

New §25.37, relating to Employer Payments from Public Junior Colleges and Public Junior College Districts, addresses the new statutory requirement adopted in SB 1812 (2013) that requires employers that are public junior colleges and public junior college districts to make the state's contribution on 50 percent of the compensation paid to certain instructional and administrative employees. SB 1812 establishes the specific requirements, including that the employer must make the state's contribution on 50 percent of the compensation paid to instructional or administrative employees whose salaries may be fully paid from funds appropriated under the General Appropriations Act, regardless of whether such salaries are actually paid from the appropriated funds. The statute also provides that the number of employees on whose compensation the contribution must be made may not be increased from one biennium to the next in a proportion greater than the change in student enrollment at each college during the

same reporting period. The rule further reflects the statutory requirement that the employer must also make the state's contribution on 100 percent of the compensation paid to all other employees who are eligible for membership in TRS. The rule does not duplicate the detail provided in the statute but directs that the contributions from the public junior colleges and public junior college districts must be made with the regular monthly report, that the contribution must be made based on amounts reportable to TRS, and that the employer must make records that are necessary to administer the requirement available to TRS.

Amended §25.77, relating to USERRA Service Creditable but not Established, reflects statutory changes adopted in SB 1458 (2013) changing retirement eligibility criteria for members who do not have five years of service credit on August 31, 2014. The amended section clarifies that USERRA service credit may be used to meet the five year requirement whether or not it is purchased, provided that the following conditions are met: the person was a member of TRS on August 31, 2014; the USERRA service was rendered on or before August 31, 2014; membership is retained until the time of retirement; and the USERRA service is verified by the time of retirement.

Amended §25.113, relating to Transfer of Credit between TRS and ERS, reflects how TRS will administer statutory changes adopted in SB 1458 (2013) changing retirement eligibility criteria for members who do not have five years of service credit on August 31, 2014. The amended section clarifies that if a member has five years of service credit on August 31, 2014, but transfers TRS service credit to ERS in order to retire from ERS and later resumes membership in TRS, the member is subject to the new retirement eligibility provisions.

Amended §25.302, relating to Calculation of Actuarial Cost of Service Credit, reflects statutory changes adopted in SB 1458 (2013) changing retirement eligibility criteria for members who do not have five years of service credit on August 31, 2014 or who had five years of service credit on that date but do not maintain the service credit until the time of purchase. The amended section addresses how the change in retirement eligibility requirements affect the actuarial cost to purchase service credit, includes new cost factor tables, and migrates the language related to the cost to purchase compensation credit to a new rule, §25.303. The amended section also updates cost factors in the form of revised cost factor tables for members who became members after September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain their membership until the time of purchase.

New §25.303, relating to Calculation of Actuarial Cost for Purchase of Compensation Credit, contains language deleted from §25.302 relating to Calculation of Actuarial Costs for Service Credit Purchase because that rule had become very complex. The new section includes not only the language moved from §25.302 but also reflects statutory changes adopted in SB 1458 (2013) changing the retirement eligibility criteria for members who do not have five years of service credit on August 31, 2014 or who had five years of service credit on that date but do not maintain the service credit until the

time of purchase. The new section also addresses how the change in retirement eligibility affects the actuarial cost to purchase compensation credit and adopts new cost factor tables.

### **§ 27.5**

Section 27.5 is located in Chapter 27 (Termination of Membership and Refunds) of TRS' rules.

Amended §27.5, relating to Termination of Rights to Benefits, describes how TRS will administer the statutory change in SB 1458 (2013) and clarifies that if a member has five years of service credit on August 31, 2014, but terminates membership in TRS by withdrawing the account and later resumes membership and reinstates the account, the member is subject to the new retirement eligibility provisions, i.e., the member does not retain his/her former tier status.

### **§ 29.1 and § 29.11**

Sections 29.1 and 29.11 are located in Chapter 29 (Benefits) of TRS' rules.

Amended §29.1, relating to Eligibility for Service Retirement, states how TRS will administer the statutory changes in SB 1458 (2013) related to retirement eligibility criteria and the requirement to have the five years of service credit on August 31, 2014. The amended section clarifies that if a member has five years of service credit on August 31, 2014 but terminates membership in TRS by withdrawing the account and later resumes membership in TRS and reinstates the account, the member is subject to the new retirement eligibility provisions, i.e., the member does not retain his/her former tier status.

Amended §29.11, relating to Actuarial Tables, corrects an error discovered by staff in one of the early age reduction tables. Rather than a 2 percent reduction for each year a member had at least 30 years of service credit but was less than age 50, the error resulted in a 2 percent reduction for each year a member who had at least 30 years of service credit but did not meet the rule of 80. The amended section includes an amended table that correctly reflects the required statutory deduction.

### **§ 43.43**

Section 43.43 is located in Chapter 43 (Contested Cases) of TRS' rules.

Amended §43.43, relating to Subpoenas and Commissions, addresses the protection given in HB 3357 (2013) to doctors serving on the TRS Medical Board. Specifically, HB 3357 provides that members of the TRS Medical Board are not subject to a subpoena regarding matters referred to them by TRS.

## § 51.13

New §51.13 will be added to Chapter 51 (General Administration) of TRS' rules.

New §51.13, relating to Five-Year Service Credit Requirement Effective August 31, 2014, states how TRS will administer the statutory changes in SB 1458 (2013) related to retirement eligibility and the requirement to have five years of service credit on August 31, 2014. The new section addresses how USERRA service may be verified but not purchased and used in meeting the five years of service credit requirement. It also notifies members that the August 31, 2014 deadline is the deadline for completing the purchase of service credit to be used in establishing the five years of service credit by that date and explains how TRS will extend the August 31, 2014 deadline, which falls on the Saturday before Labor Day, until 11:59 p.m. on Tuesday September 2, 2014 and how TRS will calculate the deadline for members who do not receive the bill for the purchase of service credit in time to purchase the service credit by the deadline. The new rule also addresses how a member may use ERS service credit that was established before September 1, 2014 to meet the five-year requirement if the person was a member of TRS on August 31, 2014. It also addresses how combined service credit with another retirement system participating in the Proportionate Retirement Program may be used to meet the five-year requirement.

The board certifies that the sections as adopted have been reviewed by legal counsel and found to be within TRS' legal authority to adopt. The new and amended rules described in this Order are adopted under Government Code § 825.102, which authorizes the board of trustees to adopt rules for eligibility of membership, the administration of the funds of the retirement system, or the transaction of the business of the board.

The following amended and new rules are also adopted under other authorizing statutes:

- Amended § 25.77 is also adopted under Government Code § 823.304, which authorizes the Board to adopt rules in order to comply with the federal law relating to USERRA service credit.
- Amended § 25.113 is also adopted under Government Code § 805.008, which authorizes TRS and ERS to adopt rules for determining the value of the monthly annuity to be paid by the system from which service credit is transferred, and § 805.009, which authorizes TRS and ERS to adopt rules for the administration of the TRS-ERS service credit transfer program.
- Amended § 25.302 and new § 25.302 are also adopted under Government Code § 823.406, which authorizes the board to adopt rules for the administration of this statute concerning the purchase of membership waiting period service credit, and § 825.105, which requires the board to adopt rates and tables the board considers necessary for the retirement system.

- Amended § 29.1 and 29.11 are also adopted under Government Code § 2001.006, which authorizes TRS, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule that TRS determines is necessary or appropriate and that TRS would have been authorized to adopt had the legislation been in effect at the time of the action.

NOW, THEREFORE, IT IS

ORDERED, That the board adopts amended TRS rules 34 Tex. Admin. Code §§ 23.5, 25.1, 25.25, 25.77, 25.113, 25.302, 27.5, 29.1, 29.11, and 43.43, and new TRS rules 34 Tex. Admin. Code §§ 25.36, 25.37, 25.303, and 51.13 *without* changes as published in the April 25, 2014 issue of the *Texas Register* (39 TexReg 3376);

ORDERED, That the board authorizes TRS staff to prepare and to file with the Secretary of State's Office in proper form and based on this Order the adopted rule preambles and the adopted rule texts, including preparing and filing other rulemaking documents as required for publication in the *Texas Register* or *Texas Administrative Code*, or both, as appropriate;

ORDERED, That the board authorizes TRS staff to work with the Secretary of State's Office and to make any technical changes required for publication of the adopted rule documents; and

ORDERED, That the related adopted rule texts, applicable board and committee materials and deliberations considered in the adoption of the rules, and adopted rule preambles published in the *Texas Register* are adopted by reference and made part of this Order.

SIGNED ON BEHALF OF THE BOARD THIS \_\_\_\_\_ DAY OF JUNE 2014.

\_\_\_\_\_  
R. David Kelly, Chairman  
TRS Board of Trustees

ATTEST:

\_\_\_\_\_  
Brian K. Guthrie  
TRS Executive Director

\_\_\_\_\_  
Carolina de Onís  
TRS General Counsel