

Policy Committee Meeting

September 24, 2015

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

(Committee Chair and Members are Subject to Change at the September Board Meeting — Mr. Colonna, Chairman; Mr. Barth; Mr. Corpus; Mr. Kelly; & Ms. Ramirez, Committee Members)

AGENDA

**September 24, 2015 – 12:45 p.m.
TRS East Building, 5th Floor, Boardroom**

1. Consider the approval of the proposed minutes of the June 11, 2015 committee meeting – Committee Chair.
2. Consider authorizing for public comment publication in the *Texas Register* proposed amendments to the following TRS rules in Title 34, Part 3 of the Texas Administrative Code – Rebecca Smith:
 - A. Rule § 25.1, relating to Full-time Service;
 - B. Rule § 25.4, relating to Substitutes;
 - C. Rule § 25.6, relating to Part-time or Temporary Employment;
 - D. Rule § 25.26, relating to Annual Compensation Creditable for Benefit Calculation;
 - E. Rule § 25.46, relating to Determination of Compensation Subject to Deposit and Credit;
 - F. Rule § 25.74, relating to Cost;
 - G. Rule § 25.85, relating to Amount of Out-of-State Service Which Can Be Purchased;
 - H. Rule § 25.121, relating to Employer Verification;
 - I. Rule § 25.131, relating to Required Service;
 - J. Rule § 25.133, relating to School Year;
 - K. Rule § 25.181, relating to Minimum Monthly Payment;
 - L. Rule § 25.182, relating to Yearly Increments of Credit;
 - M. Rule § 27.6, relating to Reinstatement of an Account;
 - N. Rule § 29.13, relating to Changing Beneficiary for Survivor Benefits;
 - O. Rule § 29.33, relating to Absence from Service;

- P. Rule § 31.14, relating to One-half Time Employment;
 - Q. Rule § 31.32, relating to Half-time Employment Up to 90 Days;
 - R. Rule § 31.34, relating to Disability Retiree Report of Excess Compensation;
 - S. Rule § 43.16, relating to Notice of Hearing and Other Action;
 - T. Rule § 43.46, relating to Rehearings;
 - U. Rule § 47.6, relating to Determination That An Order Is Not Qualified Is Final; and
 - V. Rule § 49.3, relating to Referrals of Delinquent Obligations to Attorney General for Collections.
3. Consider updates to the Policy Review Schedule – Rebecca Merrill.

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

Tab 1



Minutes of the Policy Committee

June 11, 2015

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on June 11, 2015 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:

Todd Barth, Presiding Chair

David Corpus

David Kelly

Dolores Ramirez

Others present:

Karen Charleston, TRS Trustee

Christopher Moss, TRS Trustee

Anita Palmer, TRS Trustee

Nanette Sissney, TRS Trustee

Brian Guthrie, TRS

Ken Welch, TRS

Carolina de Onís, TRS

Amy Barrett, TRS

Don Green, TRS

Howard Goldman, TRS

Barbie Pearson, TRS

Clarke Howard, TRS

Rob Dunn, TRS

Dan Junell, TRS

Lynn Lau, TRS

Heather Traeger, TRS

Steven Huff, Fiduciary Counsel, Reinhart Boerner Van Deuren s.c.

Philip Mullins, Texas State Employee Union

Ted Melina Raab, Texas American Federation of Teachers

Mr. Barth called the meeting to order at 4:27 p.m. A quorum was present.

1. Consider the approval of the proposed minutes of the March 26, 2015 committee meeting – Joe Colonna.

On a motion by Mr. Kelly, seconded by Ms. Ramirez, the committee approved the proposed minutes of the March 26, 2015 meeting, as presented.

2. Discuss and consider recommending to the Board adoption of the TRS Trustee Procurement Policy – Carolina de Onís and Robert Dunn.

Ms. de Onís described the proposed new Procurement Policy, including the following aspects: purpose and scope; governing authorities; trustee training; procurement methods; and provisions related to selecting, evaluating, and overseeing vendors and contracts. She clarified for Mr. Barth that the board considered and authorized contracts required by state law and the board's bylaws and other policies. She stated that the board would determine the desired level of participation in potential contracts having a yearly value of \$5 million or more. She clarified that the threshold would be applied at any point in the procurement process during a rolling 12-month period. Ms. de Onís also described the preferred methods of procurement listed in the policy, including requests for proposal, requests for qualifications, internal assessment, and any other method required by law or determined by the board to be appropriate. She noted other provisions mentioned in the policy pertaining to the blackout period, duration of contracts, non-binding vendor selection by the board, evaluation and oversight, and trustee training. Mr. Guthrie reviewed current board-approved contracts, highlighting those that would be expiring soon.

On a motion by Mr. Kelly, seconded by Mr. Corpus, the committee unanimously voted to recommend that the board adopt the Trustee Procurement Policy.

3. Conduct the comprehensive review of the Resolution Delegating Authority to Approve Benefit and Refund Payments under the Policy Review Schedule, and consider recommending that the Board rescind that resolution and amend the TRS Board of Trustee Bylaws – Dan Junell.

Mr. Junell stated that the Resolution Delegating Authority to Approve Benefit and Refund Payments (policy resolution) was scheduled to be reviewed by the board under the Policy Review Schedule. He stated that the policy resolution implemented Section 5.6(d) of the board's bylaws, which delegated authority to approve pension benefit and refund payments in accordance with board actions. He stated that the resolution itself actually delegated the authority to the Executive Director (ED) or the Chief Administrative Officer acting on behalf of the ED in his absence. He stated that staff reviewed the policy resolution, as well as the related bylaws provision, and concluded that the delegation be combined into one provision in the bylaws for ease of review and reference. He stated that staff recommended that the policy resolution be rescinded and the bylaws be amended to delegate such authority to the Executive Director and his or her designees.

On a motion by Mr. Moss, seconded by Mr. Corpus, the committee unanimously voted to recommend that the board adopt the resolution that rescinds the Resolution Delegating Authority to Approve Benefit and Refund Payments and amend the board's bylaws, as presented by staff.

The committee adjourned at 4:42 p.m.

Approved by the Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas on the 24th day of September, 2015.

ATTESTED BY:

Dan Junell
Secretary to the TRS Board of Trustees

Date



Tab 2



Legal Services

Memorandum

DATE: September 24, 2015

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 25, relating to Membership Credit

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to 12 rules in Chapter 25, relating to Membership Credit. Specifically, staff proposes amendments to §25.1, relating to Full-time Service; §25.4, relating to Substitutes; §25.6, relating to Part-time or Temporary Employment; §25.26, relating to Annual Compensation Creditable for Benefit Calculation; §25.46, relating to Determination of Compensation Subject to Deposit and Credit; §25.74, relating to Cost; §25.85, relating to Amount of Out-of-State Service Which Can be Purchased; §25.121, relating to Employer Verification; §25.131, relating to Required Service; §25.133, relating to School Year; §25.181, relating to Minimum Monthly Payment; and §25.182, relating to Yearly Increments of Credit. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

BACKGROUND OF THE REQUESTED ACTION

The proposed changes to the rules in Chapter 25 address statutory changes in the plan's terms adopted during the most recent legislative session and issues identified in TEAM while developing requirements for the new system.

Section 25.1, relating to Full-time Service. The proposed changes to this rule reflect statutory changes adopted in HB 2974 that require membership to be established through employment with a single employer and to clarify how to determine membership eligibility for employment in institutions of higher education (including community and junior colleges) of an instructor of classes that are taken to prepare the student for college level work but the class is not eligible for college credit.

Section 25.4, relating to Substitutes. The proposed changes to this rule clarify that employment as a substitute is not eligible for membership but service credit may be purchased for 90 days of employment as a substitute in a school year and membership in TRS established by purchasing the service credit. The

proposed changes also correct the reference to the former requirement that the member make the contributions on compensation received as a substitute in order to purchase the service credit and reflect the current requirement that the cost to establish the service credit is the actuarial cost.

Section 25.6, relating to Part-time or Temporary Employment. The proposed changes to this rule reflect statutory changes adopted in HB 2974 that require membership to be established through employment with a single employer and clarify that once membership is established through one employer, any other employment is also eligible employment.

Section 25.26, relating to Annual Compensation Creditable for Benefit Calculation. The proposed changes address the authority provided to the Board in HB 2974 to establish the 12 month period used in determining a member's annual compensation. The proposed changes address the issues raised to the Board in public comment regarding the reduced compensation used by TRS in determining the compensation in the final year of retirement due to the standard school year (September 1- August 31). The proposed changes maintain the standard school year but provide an alternate method for determining the annual compensation in the year of retirement. The proposed changes also clarify the amount of salary TRS will attribute to the 2014-2015 school year if a member loses a month of compensation due to the recent rule change that required employers to report compensation in the month that the compensation is paid rather than the month in which the compensation is earned.

Section 25.46, relating to Determination of Compensation Subject to Deposit and Credit. The proposed changes clarify that corrections to compensation due to an underpayment by the employer in the prior school year(s) will be credited by TRS in the school year in which the corrective payment is made and member contributions must be made in a lump sum based on the current contribution rate.

Section 25.74, relating to Cost. The proposed changes address issues identified in TEAM while developing requirements for the new system regarding the lack of authority of TRS to charge installment fees for the purchase of USERRA service credit and the required programming for the new system to charge installment fees for the purchase of other types of service credit but not for the purchase of USERRA service credit.

Section 25.85, relating to Amount of Out-of-State Service Which Can be Purchased. The proposed changes reflect statutory changes adopted in HB 2974 that clarify the amount of out-of-state service credit that may be purchased is limited to 5 years if the member is eligible to receive a benefit from another retirement system for the same service.

Section 25.121, relating to Employer Verification. The proposed change addresses a change identified in TEAM while developing requirements for the new system that will allow a reporting entity to make certain verifications and certifications electronically via the TRS Reporting Entity Portal rather than on a paper form.

Section 25.131, relating to Required Service. The proposed changes address issues identified in TEAM while developing requirements for the new system regarding the alternate method of establishing service credit for members who are regularly scheduled to work fewer than 5 days per week. Members who are regularly scheduled to work fewer than 5 days per week may earn service credit by working 4 ½ months rather than 90 days. The four and one-half month period must include four full calendar months in which the member works or receives paid leave for at least 8 days and an additional 5 days of service rendered in another month or months.

Section 25.133, relating to School Year. The proposed changes to this rule reference the changes in §25.26 regarding how TRS will determine annual compensation in the school year in which the member retires.

Section 25.181, relating to Minimum Monthly Payment. The proposed changes address issues identified in TEAM while developing requirements for the new system regarding the lack of authority of TRS to charge installment fees for the purchase of USERRA service credit and the required programming for the new system to charge installment fees for the purchase of other types of service credit but not for the purchase of USERRA service credit.

Section 25.182, relating to Yearly Increments of Credit. The proposed changes address issues identified in TEAM while developing requirements for the new system regarding the lack of authority of TRS to charge installment fees for the purchase of USERRA service credit and the required programming for the new system to charge installment fees for the purchase of other types of service credit but not for the purchase of USERRA service credit.

RECOMMENDATION

Staff recommends that the Policy Committee authorize publication of the proposed amendments for public comment in the *Texas Register*.

(a) Employment of a person by a single 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 with a single employer 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) as an instructor of classes taken by students for college credit or classes that are taken to prepare students for college level work, that ~~are~~ 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. Employment as an instructor of an on-line class taken by students for college credit that is 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 counted as a minimum of two clock hours for each course hour or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit must be considered for membership based on the number of clock hours worked.

(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. Effective with the beginning of the 2015-2016 school year, the minimum number of hours per week that will qualify an adjunct faculty position as eligible for membership in TRS must be served with a single employer or must meet the requirements of §25.6 of this title (relating to Part-time or Temporary Employment). 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 in a class taken by students for college credit or taken to prepare students for college level work. If a person combines work as an adjunct faculty instructor and any other type of employment, the minimum number of hours worked per week that will qualify the person for membership is 20.

(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.

(m) Beginning on September 1, 2015, if an employee is employed in two or more part-time positions with a single employer, the minimum number of hours the employee must work in all positions in order to establish eligibility for membership in TRS must equal or exceed one-half

of the hours required for the full-time equivalent position requiring the greater number of hours per week.

RULE §25.4 Substitutes

- (a) Persons who serve as substitutes in positions otherwise eligible for membership may qualify for membership provided that they serve for at least 90 days in one school year and purchase the service credit.
- (b) For purposes of this title, a substitute is a person who serves on a temporary basis in the place of a current employee. A substitute may be paid no more than the daily rate of pay set by the employer.
- (c) Membership may be established and credit received by verifying the number of days worked as a substitute and salary earned and paying the actuarial cost making the required deposits under §25.43 of this title (relating to Cost Fee on Deposits for Unreported Service or Compensation). Verification must be made in on a form prescribed by the retirement system.
- (d) In no event shall verification of substitute service be accepted after a member has retired from the system and his or her first monthly annuity payment has been issued or after the effective date of a member's participation in the Deferred Retirement Option Plan (DROP).
- (e) Required actuarial costsdeposits and fees must be paid before any benefits based on the verified substitute service are paid by TRS on behalf of the member or before the verified service is used to determine eligibility for benefits. Members claiming credit for such service will be assessed a fee for delinquent deposits, if applicable, as provided in §25.43 of this title.
- (f) Payment for substitute service required in subsection (e) of this section will be accepted and credit granted only as permissible under the Internal Revenue Code.
- (g) Substitute service purchased as provided in this section shall be included in the school year in which it was rendered in counting the amount of service provided in order to receive a year of service credit under §25.131 of this title (relating to Required Service).

- (a) Part-time (employment that is less than one-half the standard work load), irregular, seasonal, or temporary employment (employment for a definite period of less than four and 1/2 months or, for employment with an institution of higher education, the employment is for no more than one semester in a school year) is eligible only if such employment, when combined with other employment in Texas public educational institutions during the same school year, qualifies as service eligible for membership or if such other employment in itself qualifies as service eligible for membership.
- (b) Beginning with the 2015-2016 school year, part-time (employment that is less than one-half the standard work load), irregular, seasonal, or temporary employment (employment for a definite period of less than four and 1/2 months or, for employment with an institution of higher education, the employment is for no more than one semester in a school year) is eligible only if combined with other employment with the same employer so that the combined employment qualifies as service eligible for membership, or if other employment with the same or another TRS-covered employer in itself qualifies as service eligible for membership.

(a) Except as provided in subsections (b), (g) and (h) of this section, for the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, annual compensation means creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year for service rendered during no more than a 12-month period. ~~For the school year in which the member retires and except as provided in §25.24(e) of this title (relating to Performance Pay), creditable annual compensation earned by the date of retirement but not yet paid at the date of retirement shall be included in the annual compensation for that year. If due to an error of the employer, compensation earned by the retiree in the final school year before retirement is not paid and/or not reported before the first annuity payment is issued, upon notice to TRS and the submission of all required corrected reports and member and employer contributions on the compensation, TRS shall adjust its records. If the additional compensation results in increased benefits payable on behalf of the retiree, the adjusted benefit shall be paid beginning in the month TRS receives the additional contributions and the corrected reports. In no event may an error be corrected under this subsection after the end of the school year following the school year in which the member retired.~~

(b) For the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths before April 1, 2015, annual compensation paid prior to September 1, 2012 is the greater of:

(1) the amount of creditable compensation for service paid to a member of the retirement system during a 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(2) the amount of creditable compensation paid to the member during a 12-month period beginning September 1 and ending August 31 of the next calendar year.

(c) Unless otherwise provided by law or this chapter, a member shall receive credit only for annual compensation actually received.

(d) Compensation from which deductions for an Optional Retirement Program annuity were made shall not be included in annual compensation for benefit calculation purposes.

(e) If as a result of the requirement in §25.28(c) of this title (relating to Payroll Report Dates) to report compensation in the month that it is paid rather than the month it is earned a member has only 11 months of salary credited by TRS in the 2014-2015 school year and that year of compensation would have been one of the years of compensation used in calculating the member's highest average salary for benefit calculation purposes, TRS will attribute an additional month of salary in the 2014-2015 school year for purposes of benefit calculation. The amount that TRS will attribute for the additional month of salary is the amount of compensation that would have been reported for the missing month if the requirement in §25.28(c) of this title to report compensation in the month that it is paid was not in place and instead the employer reported the compensation earned in the missing month.

(f) For the purpose of computing the amount of retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths after March 31, 2015, annual compensation shall be calculated as follows:

(1) for the 2013-2014 school year and thereafter, annual compensation is the amount of creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year;

(2) for the 2012-2013 school year, annual compensation is the greater of:

(A) the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(B) the amount of creditable compensation paid to the member during a 12-month period beginning September 1, 2012 and ending August 31, 2013.

(3) for school years prior to the 2012-2013 school year annual compensation shall be the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year).

(g) Effective with the 2015-2016 school year, annual compensation for the school year in which the member retires is the highest total of compensation received during a 12 consecutive month period that occurs during a 14 consecutive month period provided:

(1) the member completes the full contract period for the final year;

(2) the 14 consecutive month period includes the months of September through August of the school year in which the member retires;

(3) the 14 consecutive month period does not include months prior to the month in which the member's contract for the final year began;

(4) the annual compensation under this subsection does not include compensation earned after retirement, except that as provided in §25.24(e) of this title (relating to Performance Pay), creditable annual compensation earned by the date of retirement but not yet paid at the date of retirement is included in the annual compensation for that year;

(5) the annual compensation under this subsection does not include performance pay credited by TRS as annual compensation in a prior school year;

(6) the annual compensation for the school year in which the member retires is subject to all applicable Internal Revenue Code limits for that school year;

(7) the member does not receive credit for more than 12 months of compensation in the annual compensation for the final school year; and

(8) the member's compensation in the final year before retirement is not paid out in fewer than 12 months.

(h) If due to an error of the employer, compensation earned by the retiree in the final school year before retirement is not paid and/or not reported before the first annuity payment is issued, upon notice to TRS and the submission of all required corrected reports and member and employer contributions on the compensation, TRS shall adjust its records. If the additional compensation results in increased benefits payable on behalf of the retiree, the adjusted benefit shall be paid beginning in the month TRS receives the additional contributions and the corrected reports. In no event may an error be corrected under this subsection after the end of the school year following the school year in which the member retired.

- (a) The amount of deposits due for unreported service rendered or compensation paid in the current school year or for unreported service rendered or compensation paid in the immediately preceding school year and corrected as provided in §25.28(g) of this title (relating to Payroll Report Dates) will be calculated at the member contribution rate in effect for the year in which the service was rendered or compensation was paid but for which no deposits or insufficient deposits were made. Contributions will be based on creditable compensation as determined under the laws and rules applicable at the time of the service.
- ~~(a)~~(b) Beginning with the 2015-2016 school year, compensation paid to a member by an employer to correct an error of underpayment occurring in a prior school year or school years will be credited by TRS in the school year in which the compensation is paid. The amount of contributions owed on creditable compensation is determined under the laws and rules applicable at the time of the corrective payment and must be paid in a lump sum pursuant to Government Code, §825.409 from any compensation due to the employee.

(a) To obtain service credit for active military duty under the Uniformed Services Employment and Re-Employment Rights Act (USERRA) and §25.71 of this title (relating to Service Credit for Eligible Active Duty under the Uniformed Services Employment and Re-Employment Rights Act), the member must deposit with the retirement system for each school year of service claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, the Teacher Retirement System (TRS) will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(b) To obtain credit for member compensation for active military duty under the USERRA and §25.71 of this title, the member must deposit with the retirement system for each school year of salary credit claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, TRS will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(c) Credit for member compensation may be established for any school year of active military duty eligible under the USERRA and §25.71 of this title, even if service credit has already been granted for the school year for service in the public schools of Texas.

(d) Establishment of compensation credit does not entitle a member to service credit for a school year unless no service credit has been granted for the school year through sufficient service in the public schools of Texas.

(e) A member is first eligible to establish credit under §25.71 of this title on the date of application for reemployment in a TRS covered position or on November 12, 1991, whichever is later.

(f) Service credit purchased under this section shall be purchased in the order in which the service was rendered, with the earliest years of military service being purchased first.

(g) The amount required to establish service credit under subsection (a) of this section and the amount required to establish compensation credit under subsection (b) of this section must be submitted in a lump sum equal to the cost to purchase at least one year of service or compensation credit and may not be submitted using the installment method of payment.

(a) Credit is limited to one year of out-of-state service for each year in Texas.

(b) No out-of-state service can be used to compute any benefit for any person with less than 5 years service in Texas.

(c) Not more than 15 years out-of-state service can be purchased in accordance with Government Code, §823.401, provided that if any of the years of out-of-state service is considered nonqualified service, no more than five years of nonqualified service credit can be purchased. For purposes of this section, nonqualified service means the member's out-of-state service is currently maintained in another public retirement system from which the member has a right to receive a distribution, including a refund of contributions and any purchase is subject to applicable plan qualification requirements, including applicable plan limitations on member contributions.

(d) Any purchase is subject to applicable plan qualification requirements, including applicable plan limitations on member contributions.

RULE §25.121 Employer Verification

Verification of service or compensation that was not reported to TRS or that was reported but requires further documentation in order to be creditable must be made by the employer ~~on~~ in a form prescribed by TRS. At the request of TRS, employers shall provide copies of any records or information regarding service or compensation, including but not limited to contracts, work agreements, salary schedules or addenda, board minutes, payroll records, employment records, or other materials that will assist TRS in making a determination. TRS may rely upon employer verifications of service or compensation or may conduct an investigation to determine whether verified service or compensation is eligible.

RULE §25.131 Required Service

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

(1) Except as provided in paragraph (3) of this subsection, a member must work in a TRS eligible position and be paid or receive paid leave from a TRS eligible position at least 90 days during the school year to receive a year of service credit.

(2) A substitute as defined in §25.4 of this title (relating to Substitutes) will be qualified for membership and granted a full year of service credit by working 90 or more days as a substitute in a school year, receiving pay for that work, and verifying the work as provided in §25.121 of this title (relating to Employer Verification) and paying ~~deposits and fees~~ the actuarial cost for the work as provided in §25.43 of this title (relating to ~~Cost Fee on Deposits~~ for Unreported Service or Compensation).

(3) In the last school year of service before retirement, a member serving in an eligible position who worked and was paid for that work or received paid leave for less than 90 days in the school year but worked and was paid for that work or received paid leave for a full fall semester in accordance with the employer's calendar will receive a year of service credit. If the employer's calendar does not provide for semesters, a member must work and be paid for work in an eligible position or receive paid leave from an eligible position for at least 90 days in order to receive a year of service credit for the school year before retirement.

(4) Days that the employer is scheduled to be closed for business are not included in the 90 days of work required to receive a year of service credit unless the day(s) are paid holidays by the employer or the employee was charged with paid leave during the closing. Holidays that are not included in the required number of work days for an employee are not counted as paid holidays or days of paid leave.

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

(1) Except as provided in paragraph (2), (3), or (4) of this subsection, a member must serve at least 4 1/2 months in an eligible position during the school year to receive credit for a year of service.

(2) A member who served less than four and one-half months in a school year but served a full semester of more than four calendar months will receive credit for a year of service.

(3) A substitute as defined in §25.4 of this title will be qualified for membership and granted a full year of service credit by rendering 90 or more days of service as a substitute in a school year and verifying the service as provided in §25.121 of this title and paying deposits and fees for the service as provided in §25.43 of this title.

(4) An employee who enters into an employment contract or oral or written work agreement for a period which would qualify the employee for a year of service credit under the other provisions of this section but who actually renders only the amount of service specified in §25.4 of this title will receive credit for a year of service credit.

(c) Beginning on the first day of the 2015-2016 school year and thereafter, in lieu of the requirements in subsection (a) of this section, a member who is serving in a membership eligible position and who is regularly scheduled to work fewer than 5 days per week, may establish a year of service credit by working and receiving pay for that work or using paid leave, for four and one-half months. The four and one-half month period must include four full calendar months in which the member renders service and is paid or the member uses paid leave, for at least 8 days and an additional five days of service rendered and for which the member is paid or paid leave used in

| another calendar month or months but not to include ~~that precede and/or follow~~ the four full calendar months.

(d) Except as provided in subsection (a) of this section, for service credit granted in the school year in which the member retires, in no event may a member receive a year of service credit earlier than December 31.

RULE §25.133 School Year

(a) For the purpose of granting creditable time toward retirement and determining a member's annual compensation, for school years prior to the 2012-2013 school year a "school year" shall be one of the following:

(1) a period extending from the beginning of the school term (but not earlier than August 23) through August 31 of the following calendar year for service rendered prior to the 1970-1971 school year;

(2) a period extending from the beginning of the school term (but not earlier than August 2) through August 31 of the following calendar year for service rendered for the 1970-1971 school year and thereafter; or

(3) a period not to include more than 12 months, extending from the beginning date of a "qualified contract" or an oral or written work agreement year through August 31 of the following calendar year or to the beginning date of a subsequent qualified contract or oral or written work agreement year, whichever is earlier. Use of this "qualified contract year" is optional for school years 1970-1971 through 1974-1975 but shall be mandatory for all persons under a qualified contract after the 1974-1975 school year. Use of a written or oral work agreement that is not a qualified contract is optional for school years 1970-1971 through 1994-1995, but shall be mandatory for all persons employed under a written or oral work agreement after the 1994-1995 school year. A "qualified contract" or "work agreement" is any employment agreement in which service each year under the agreement is to begin on or after July 1 and is to extend past August 31 of the same calendar year. A "qualified contract" further imposes upon the employing school district a legal obligation to employ and compensate the employee for the entire duration of the agreed employment period.

(b) Except as provided in §25.26(g) of this title (relating to Annual Compensation Creditable for Benefit Calculation) regarding determining a member's annual compensation in the year of retirement, for ~~For~~ the purpose of granting creditable time toward retirement and determining a member's annual compensation, beginning with the 2012-2013 school year and thereafter a "school year" shall be a 12 month period beginning September 1 and ending August 31 of the next calendar year.

RULE §25.181 Minimum Monthly Payment

Installment payments to establish special service credit, except USERRA service credit which may not be purchased using installment payments, including payments by cash, check, or similar methods, payments by bank draft, or payments by payroll deduction shall be no less than \$25 per month.

RULE §25.182 Yearly Increments of Credit

(a) For out-of-state service credit, military service credit, work experience service credit purchased under Government Code §823.404, USERRA service credit, developmental leave service credit, and unreported service credit, a member may choose to purchase fewer years of service credit than the total years of service credit which the member is eligible to purchase. The years of credit shall be purchased and credited in the order in which they appear on the TRS bill for the purchase.

(b) For military service, ~~and~~ work experience service credit purchased under Government Code §823.404, ~~and USERRA service~~, the member must complete payment for the number of years of credit that the member has chosen to purchase before purchasing additional years of the same kind of service credit by either lump sum payment or by additional installment payments. A member purchasing USERRA service credit must purchase the service credit by paying the cost of the additional year(s) in a lump sum payment and may not purchase the service credit using the installment payment method. Until August 31, 2013, a member purchasing out-of-state service credit, developmental leave service credit, or unreported service credit under an installment purchase agreement may enter into a second installment purchase agreement for the same type of service credit or may pay the lump sum cost of the additional service credit before completing the purchase of the same type of service credit under the initial installment purchase agreement.

(c) A member must purchase all withdrawn service credit and may not choose to purchase this type of service credit in yearly increments. A member will not receive any credit for withdrawn service until the entire balance due and all fees have been paid



Legal Services

Memorandum

DATE: September 24, 2015

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

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to one rule in Chapter 27, relating to Termination of Membership and Refunds. Specifically, staff proposes amendments to §27.6, relating to Reinstatement of an Account. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

BACKGROUND OF THE REQUESTED ACTION

The proposed changes to the rule in Chapter 27 address an issue identified in TEAM while developing requirements for the new system.

Section 27.6, relating to Reinstatement of an Account. The proposed changes to this rule clarify that service credit terminated by an election to participate in the Optional Retirement Program (ORP) may not be reinstated for the purpose of establishing eligibility for benefits under the Proportionate Retirement Program except by terminating all employment with institutions of higher education and returning to employment with a public school employer as described in §25.172(a).

RECOMMENDATION

Staff recommends that the Policy Committee authorize publication of the proposed amendments for public comment in the *Texas Register*.

(a) Except as provided in subsection (e) of this section, any ~~Any~~ member who has withdrawn an account resulting in the cancellation of service credit may reinstate this account and receive credit for the canceled service by meeting the following requirements:

(1) resume membership service in the retirement system or establish eligibility under Government Code, Chapter 803 or 805;

(2) redeposit the amount withdrawn for the years during which the membership was terminated;

(3) except as provided by subsections (b) and (c) of this section, pay a reinstatement fee of 8 percent compounded annually in whole year increments from August 31st of the plan year in which the withdrawal occurred to the date of redeposit;

(4) reinstate all withdrawn accounts which resulted in the cancellation of service credit. A withdrawn account representing less than a creditable year of service must be reinstated only when it is necessary to combine the canceled service in the account with all other canceled service or with other eligible membership service or equivalent membership service performed in the same year to constitute a creditable year of service.

(b) A member may establish withdrawn service credit by paying the deposits and fees required in subsection (c) of this section if:

(1) the member otherwise meets all eligibility requirements under §823.501, Government Code, as amended;

(2) all of the service for which credit is sought to be established was rendered before September 1, 2011, and TRS received an application to withdraw the credit on or before August 31, 2011; and

(3) the member makes payment for the withdrawn service credit, or enters into an installment agreement for payment, not later than August 31, 2013.

(c) To reinstate withdrawn service credit under subsection (b) of this section, the member shall redeposit the amount withdrawn for the years during which the membership was terminated and shall pay a reinstatement fee of 6 percent compounded annually in whole year increments from August 31 of the plan year in which the withdrawal occurred to the date of redeposit.

(d) Membership service credit and the accumulated contributions associated with the membership terminated by not qualifying for service credit for five consecutive years as provided in §822.003(a)(4), Government Code, may be restored by TRS when the person returns to TRS covered employment provided the accumulated contributions in the member account have not been withdrawn. If the accumulated contributions have been withdrawn, the member may reinstate the withdrawn account as provided in this section.

(e) A person who terminated membership in TRS by electing participation in the Optional Retirement Program (ORP) may not reinstate the years of terminated service credit in TRS for the purpose of establishing eligibility for retirement benefits under the Proportionate Retirement Program except as provided in §25.172(a) of this title (relating to ORP and TRS).



Legal Services

Memorandum

DATE: September 24, 2015

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

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to two rules in Chapter 29, relating to Benefits. Specifically, staff proposes amendments to §29.13, relating to Changing Beneficiary for Survivor Benefits and §29.33, relating to Absence from Service. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

BACKGROUND OF THE REQUESTED ACTION

The proposed changes to the rules in Chapter 29 address statutory changes in the plan's terms adopted during the most recent legislative session and changes needed to comply with the law as clarified by the Supreme Court in the recent *Obergefell v. Hodges* decision.

Section 29.13, relating to Changing Beneficiary for Survivor Benefits. The proposed changes to this rule address an issue identified by staff after the Supreme Court ruling in *Obergefell* regarding same sex marriages. The proposed changes will allow a retiree receiving a standard annuity who was not permitted to designate a same sex spouse as the beneficiary of an optional retirement annuity at retirement because of the Internal Revenue Code restriction on the adjusted minimum age difference between the retiree and the beneficiary or who married a same sex spouse after retirement but before the ruling in *Obergefell*, a two year window of opportunity to change the standard annuity to an optional annuity and name the spouse as beneficiary. Staff also proposes changing the title of the rule to reflect the opportunity to change retirement plans.

Section 29.33, relating to Absence from Service. The proposed changes to this rule address an issue that may arise as a result of statutory changes adopted in HB 2974 that precludes termination of membership if the member is employed with a TRS-covered employer but in a position that is less than one-half time

and for that reason the position is not eligible for membership. The TRS plan terms have not specifically addressed what is meant by absence from service for purposes of establishing eligibility for active member death benefits. The proposed changes clarify what absence from service means regarding the death benefits payable by TRS.

RECOMMENDATION

Staff recommends that the Policy Committee authorize publication of the proposed amendments for public comment in the *Texas Register*.

(a) A retiree may change the designation of beneficiary for survivor benefits at any time.

(b) A retiree who retired before June 26, 2015 and is receiving a standard service or disability retirement annuity under Government Code, Section 824.203 or 824.304(b), who was not permitted to name a same-sex spouse as the beneficiary of an optional annuity at retirement because of the Internal Revenue Code restriction on adjusted minimum age difference between the retiree and the beneficiary, or who married after retirement but before June 26, 2015 and was not permitted to name the retiree's same-sex spouse as the beneficiary of an optional annuity under Government Code, Section 824.1011, may no later than December 31, 2017 replace the standard annuity under Section 824.1011 and select an optional annuity under Government Code, Section 824.204(c)(1), (c)(2), or (c)(5), or under Government Code, Section 824.308(c)(1), (c)(2), or (c)(5), on a form prescribed by TRS and designate the retiree's spouse as the beneficiary as if the retiree had married after retirement. The selection of the optional annuity and the designation of the beneficiary of the optional annuity do not take effect until the first annuity payment that becomes due two years after the date the selection and designation are received by TRS.

RULE §29.33 Absence from Service

(a) If a member is absent from service at the time of death and the absence does not meet the description in §824.403 of the Government Code, the beneficiary is eligible to receive only the accumulated deposits of the member. For this purpose, absence from service begins September 1 following the last eligible reported membership service.

(b) Eligibility for receipt of death benefits authorized by Government Code §824.402 shall be determined by TRS staff.

(c) For purposes of this section, absent from service means that the member was not an employee of a TRS-covered employer during the school year in which the member died.



Legal Services

Memorandum

DATE: September 24, 2015

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 31, relating to Employment After Retirement

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to three rules in Chapter 31, relating to Employment After Retirement. Specifically, staff proposes amendments to §31.14, relating to One-half Time Employment; §31.32, relating to Half-time Employment Up to 90 Days; and §31.34, relating to Employment Up to Three Months on a One-Time Only Trial Basis. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

BACKGROUND OF THE REQUESTED ACTION

The proposed changes to the rules in Chapter 31 address issues identified in TEAM while developing requirements for the new system and issues identified by staff administering the employment after retirement program. One issue regards the limits on employment after retirement for service and disability retirees employed as faculty by institutions of higher education. The proposed changes also clarify how the plan's limit on the amount of time a disability retiree may work full-time without forfeiting any monthly annuities is administered by TRS.

Section 31.14, relating to One-half Time Employment. The proposed changes clarify how to determine the number of hours worked by a service retiree employed by an institution of higher education (including community and junior colleges) as an instructor of classes that are taken to prepare the student for college level work but are not taken for college credit as the current rule describes.

Section 31.32, relating to Half-time Employment Up to 90 Days. The proposed changes clarify how to determine the number of hours worked by a disability retiree employed by an institution of higher education (including community and junior colleges) as an instructor of classes that are taken to prepare the student for college level work but are not taken for college credit as the current rule describes.

Section 31.34, relating to Employment Up to Three Months on a One-Time Only Trial Basis. The proposed changes clarify an issue identified in TEAM while developing requirements for the new system regarding the opportunity for a disability retiree to work full-time on a three month trial basis for each period of disability.

RECOMMENDATION

Staff recommends that the Policy Committee authorize publication of the proposed amendments for public comment in the *Texas Register*.

RULE §31.14 One-half Time Employment

(a) A person who is receiving a service retirement annuity who retired after January 1, 2011 may be employed on as much as a one-half time basis without forfeiting annuity payments for the months of employment. In this section, one-half time basis means the equivalent of four clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule.

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(c) Paid time-off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(d) For the purpose of this section, actual course or lab instruction with an institution of higher education (including community and junior colleges) in classes taken by students for college credit or classes that are taken to prepare students for college level work, and that are expressed in terms of number of courses; course or semester hours/credits; instructional units; or other units of time representing class or instructional time shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab 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 established standard will be used to determine the number of courses or labs a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is 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 counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit, must be counted based on the number of clock hours worked.

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

half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

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

(g) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

RULE §31.32 Half-time Employment Up to 90 Days

(a) Any person receiving a disability retirement annuity may, without affecting payment of the annuity, be employed for a period not to exceed 90 days during any school year by a public educational institution covered by TRS on as much as a one-half time basis. In this section, one-half time basis means the equivalent of four clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule; working any part of a day counts as one day towards the 90 day annual limit established in this section. This exception does not apply for the first month after the retiree's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(c) Total substitute service under §31.33 of this title (relating to Substitute Service Up to 90 Days) and half-time employment may not exceed 90 days during any school year. Substitute service under §31.33 of this title (relating to Substitute Service Up to 90 Days) and half-time employment may be combined in the same calendar month only if the total number of days that the disability retiree works in those positions in that month does not exceed one-half the number of days available that month for work. Working any part of a day as a substitute or half-time counts as working one day. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(d) Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(e) For the purpose of this section, actual course instruction in state-supported colleges (including junior colleges), and universities of classes taken by students for college credit or classes that are taken to prepare students for college level work, and that are measured in course or semester hours shall be counted as a minimum of two clock hours per one course or semester hour in order to reflect instructional time as well as preparation and other time typically associated with one course hour of instruction. If the employer has established a greater amount of preparation time for each course or semester hour, the employer's established standard will be used to determine the number of course or semester hours a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is 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 counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which

the students/participants do not receive college credit must be counted based on the number of clock hours worked.

(a) Any person receiving a disability retirement annuity may, without forfeiting payment of the annuity, be employed on a one-time only trial basis on as much as full time for a period of no more than three consecutive months if the work meets the requirements in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) The work must occur:

(1) in a period, designated by the employee, of no more than three consecutive months; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31.

(c) TRS must receive written notice of the retiree's election to take advantage of the exception described by this section. The notice must be made on a form prescribed by TRS and filed with TRS prior to the end of the three month trial period.

(d) Working any portion of a month counts as working a full month for purposes of this section.

(e) The three month exception permitted under this section is in addition to the 90 days of work allowed in §31.33 of this chapter (relating to Substitute Service up to 90 Days) or §31.32 of this chapter (relating to Half-time Employment Up to 90 Days) for a disability retiree.

(f) The trial work period may occur in one school year or may occur in more than one school year provided the total amount of time in the trial period does not exceed three months and the months are consecutive.

(g) A disability retiree may elect to work on a one-time only trial basis for as much as full time for a period of no more than three consecutive months for each period of disability retirement subject to the requirements of this section.



Legal Services

Memorandum

DATE: September 24, 2015

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

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to two rules in Chapter 43, relating to Contested Cases. Specifically, staff proposes amendments to §43.16, relating to Notice of Hearing and Other Action and §43.46, relating to Rehearings. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

BACKGROUND OF THE REQUESTED ACTION

The proposed changes to the rules in Chapter 43 address statutory changes regarding contested case matters adopted during the most recent legislative session.

Section 43.16, relating to Notice of Hearing and Other Action. The proposed changes to this rule reflect statutory changes adopted in SB 1267 that address changes to notice requirements and the deadlines for providing a more definite and detailed statement of the factual matters at issue in contested case hearings. The statutory changes require TRS to include a short, plain statement of the “factual matters” at issue within 7 days of the date set for the hearing.

Section 43.46, relating to Rehearings. The proposed changes to this rule reflect statutory changes adopted in SB 1267 that address statutory changes to deadlines to submit, respond, and take action on motions for rehearing in contested cases.

RECOMMENDATION

Staff recommends that the Policy Committee authorize publication of the proposed amendments for public comment in the *Texas Register*.

(a) Notices of hearing, proposals for decision, and all other rulings, orders, and actions by SOAH, TRS, or an administrative law judge, as applicable, shall be served upon all parties or their attorneys of record in person or at their last known address by mail. Service by mail is complete upon deposit in the mail, properly addressed, with postage prepaid if it is received by TRS within a timely manner under Texas Rule of Civil Procedure 5 and the sender provides adequate proof of the mailing date. Service may also be accomplished by electronic mail or facsimile transmission if all parties agree. In that case, the sender shall retain the original of the document and file it upon request with the administrative law judge or the executive director, as applicable. Upon request, the sender has the burden of proving the date and time of receipt of the document served by facsimile transmission or electronic mail. Electronic mail may not be used with documents produced pursuant to a discovery request. On motion by any party or on its own motion, TRS may serve notice of a hearing on any person whose interest in the subject matter will be directly affected by the final decision in the case.

(b) All initial hearing notices shall include the following:

- (1) a statement of time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved;
- (4) a short, plain statement of the **factual** matters asserted. If TRS or a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than ten days before the date set for hearing, a more definite and detailed statement must be furnished not less than **seven [three]** days prior to the date set for the hearing; and
- (5) a statement that failure to appear at the prehearing conference or any scheduled hearing may result in the following: the facts alleged by TRS may be admitted as true; the relief requested by TRS may be granted; petitioner's appeal may be denied; or petitioner's appeal may be dismissed with prejudice for failure to prosecute the claim; or any or all of the foregoing actions.

(c) After service of the initial notice, any party wishing to raise issues or matters not set forth in the initial notice must do so by filing a motion which sets forth such issues or matters not less than 30 days before the date set for hearing. If the motion is granted, the administrative law judge shall give notice, not less than 20 days before the date of hearing, of the additional issues and matters to be decided in the contested case.

(d) All other notices in a contested case shall set forth only the additional issues and matters to be decided.

RULE §43.46 Rehearings

(a) A decision of the executive director is the final decision of TRS when, under applicable law or rule, the decision is not subject to appeal to the board and when the circumstances described in Government Code, §2001.144, are met.

(b) A decision by the board of trustees in a contested case is the final decision of TRS when the circumstances described in Government Code, §2001.144, are met.

(c) A party adversely affected by a decision that may be the final decision of TRS may file a motion for rehearing with TRS, not later than the 25th [20th] day after the date on which the ~~[party or party's attorney of record is notified of the]~~ decision or order that is the subject of the motion is signed, unless the time for filing the motion has been extended under Government Code § 2001.142, by an agreement under Government Code § 2001.147, or by written order of the executive director under subsection (g) of this section [may become final under Government Code, §2001.144 ~~A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the notice is mailed. Any motion for rehearing shall be directed to the attention of the executive director and served on all parties]~~. A timely motion for rehearing is a prerequisite to an appeal in a contested case under Government Code, §2001.145, if an appeal is otherwise permitted by law.

(d) A reply to the motion for rehearing must be filed with TRS not later than the 40th [30th] day after the date on which the ~~[party or party's attorney of record is notified of]~~ the decision or order that is the subject of the motion is signed, or not later than the 10th day after the date a motion for rehearing is filed if the time for filing the motion for rehearing has been extended by an agreement under Government Code § 2001.147 or by a written order of the executive director under subsection (g) of this section [that may become final under Government Code, §2001.144].

(e) The board of trustees, or the executive director if the motion for rehearing concerns a decision of the executive director that may not be appealed to the board, shall act on a motion for rehearing not later than the 55th [45th] day after the date on which the ~~[party or party's attorney of record is notified of the]~~ decision or order that is the subject of the motion is signed [may become final]. If the motion is not acted on within the time specified, the motion is overruled by operation of law.

(f) The board of trustees may rule on a motion for rehearing in the manner provided for in Government Code, §2001.146. A subsequent motion for rehearing is not required after the board of trustees rules on a motion for rehearing unless a motion is required under Government Code § 2001.146(h).

(g) The executive director may by written order extend the time for filing a motion or reply or for TRS to take action on a motion for rehearing, in accordance with Government Code, §2001.146.

(h) A motion for rehearing under this section must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.



Legal Services

Memorandum

DATE: September 24, 2015

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 47, relating to Qualified Domestic Relations Orders

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to one rule in Chapter 47, relating to Qualified Domestic Relations Orders. Specifically, staff proposes amendments to §47.6, relating to Determination That An Order Is Not Qualified Is Final. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

BACKGROUND OF THE REQUESTED ACTION

The proposed changes to the rule in Chapter 47 address statutory changes regarding contested case matters adopted during the most recent legislative session.

Section 47.6, relating to Determination That An Order Is Not Qualified Is Final. The proposed change to this rule reflects statutory changes adopted in SB 1267 and conforms the TRS rule regarding the number of days a petitioner has to file a motion for reconsideration on a determination that a domestic relations order is not a qualified order with the statutory timeline for filing a motion for rehearing on a contested case matter.

RECOMMENDATION

Staff recommends that the Policy Committee authorize publication of the proposed amendments for public comment in the *Texas Register*.

A determination by the executive director or the executive director's designee that an order is not a QDRO is a final decision by TRS. No appeal to the board of trustees of TRS is authorized. However, a party adversely affected by a determination of the executive director or the designee must file a motion for reconsideration with the executive director no later than ~~20~~25 days after the date such determination is rendered if the party wishes to contest the determination.



Legal Services

Memorandum

DATE: September 24, 2015

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 49, relating to Collection of Delinquent Obligations

REQUESTED ACTION

Staff asks the Policy Committee to authorize publication of proposed amendments to one rule in Chapter 49, relating to Collection of Delinquent Obligations. Specifically, staff proposes amendments to §49.6, relating to Referrals of Delinquent Obligations to Attorney General for Collections. The proposed amendments would be published for public comment in the *Texas Register* for at least 30 days before the committee and board consider their adoption.

BACKGROUND OF THE REQUESTED ACTION

The proposed changes to the rule in Chapter 49 address rule changes made by the Attorney General regarding the referral of delinquent obligations to the Attorney General for collection action.

Section 49.3, relating to Referrals of Delinquent Obligations to Attorney General for Collection. The proposed changes to this rule reflect changes adopted by the Attorney General regarding the timeline for referring a delinquent obligation to the Attorney General for collection and conform the TRS rule regarding the number of days to refer a matter to the Attorney General with the timeline set by the Attorney General.

RECOMMENDATION

Staff recommends that the Policy Committee authorize publication of the proposed amendments for public comment in the *Texas Register*.

- (a) If a department determines that a delinquent obligation may be collectible or if TRS procedures otherwise require, the department shall refer the obligation to the Legal Services Department for recommendation of whether TRS should refer the obligation to the attorney general for collection.
- (b) The executive director or his designee shall decide whether to refer a matter to the attorney general for collection. This decision and any referral to the attorney general should be made no later than ~~90~~120 days after the determination that an obligation owed to TRS is delinquent.
- (c) Except as noted in this chapter, TRS will not refer for collection delinquent obligations in which the amount to be recovered would be less than the total sum of expense to TRS and the attorney general for travel, employee time, court costs, and other relevant expenses.
- (d) The executive director or his designee may for policy reasons, actuarial reasons, or other good cause refer a delinquent obligation to the attorney general for collection even if the size of the obligation or other considerations generally would cause TRS not to refer the obligation.
- (e) In making a determination of whether to refer a delinquent obligation to the attorney general, the executive director or his designee shall consider:
- (1) expense of further collection procedures;
 - (2) the size of the delinquent obligation;
 - (3) the existence of any security;
 - (4) the possibility of collection or satisfaction of the delinquent obligation through other means;
 - (5) the likelihood of collection; and
 - (6) any other relevant factors established by TRS collections procedures.
- (f) When referring a delinquent obligation to the attorney general, TRS shall provide:
- (1) the obligor's verified address and telephone number;
 - (2) a statement that the obligation is not uncollectible;
 - (3) proof of no more than two demand letters to the obligor at the obligor's verified address; and
 - (4) other relevant information relating to the delinquent obligations and TRS's collection efforts.

Tab 3

September 18, 2015

MEMORANDUM

TO: Board of Trustees
Brian Guthrie, Executive Director

FROM: Rebecca Merrill

TRS Board Bylaws Subsection 3.1.5(c) provides that the Policy Committee (“Committee”) is to adopt and follow a plan of review for each fiscal year to ensure that all written TRS Board policies are reviewed periodically. To accomplish this requirement, the Committee has adopted the Policy Review Schedule (“Schedule”), which provides for the regular review of all written board policies and is to be adopted every September.

Included in your materials are a “marked” copy of the Schedule and a one-pager that shows only the policies on the Schedule that are slated for review this year. At the Committee meeting, staff will be asking the Committee to adopt the updates to the Schedule.

The Schedule is only adopted at the Policy Committee level. Therefore, at the September meeting, the Policy Committee will consider updating the Schedule but will not make a recommendation on the matter to the full Board.

**TEACHER RETIREMENT SYSTEM OF TEXAS
POLICY REVIEW SCHEDULE
APPROVED BY THE POLICY COMMITTEE SEPTEMBER 24, 2015**

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS		DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEW ⁱ	DATE TO BEGIN NEXT REVIEW ⁱⁱ
ADMINISTRATIVE					
Mission Statement	Executive Director; Legal	2 years		December 2013	November December 2015
Authorization to Approve and Sign Vouchers	Financial; Legal	3 years		April 2013	April 2016
Performance Incentive Pay Plan	Executive Director; Investments; Human Resources; Legal	1 year		September 2015	September 2016
Resolution Regarding Correction of Errors and Other Edits	Executive Director	5 years		February 2012	April 2017
Rules of the Board of Trustees – Rule Review	Legal; Finance; Benefits	4 years ⁱⁱⁱ	Chapter 53	December 2013 ^{iv}	June 2017 ^v
			Chapters 21-51	November 2014^{vi}	March 2018^{vii}

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEWⁱ	DATE TO BEGIN NEXT REVIEWⁱⁱ
Litigation Policy	General Counsel	3 years	March 2015	March 2018
Policy on Negotiated Rulemaking and Alternative Dispute Resolution	Executive Director; Legal	5 years	June 2013	June 2018
Procurement Policy	General Counsel	3 years	June 2015	June 2018
At Will Employment	Human Resources; Legal	10 years	September 2013	September 2023
BOARD GOVERNANCE & ETHICS				
Bylaws of the Board of Trustees	Legal	4 years	September 2014	September 2018
Board Training Policy	Executive Director; Human Resources	4 years	November 2014	November 2018
Trustees External Communication Policy	Communica- tions	5 years	March 2014	March 2019
Trustee Ethics Policy and Position Description	Legal	4 years	December 2013	December 2019

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEWⁱ	DATE TO BEGIN NEXT REVIEWⁱⁱ
EMPLOYEE & VENDOR ETHICS				
Designation of Key Employees	Executive Director	2 years	December 2013	November 2015
Employee Ethics Policy	Legal	4 years	December 2013	December 2017
Conflict of Interest Disclosure Statement (for use with the Employee Ethics Policy)	Legal	4 years	December 2013	December 2017
Ethics Compliance Statement for Employees (for use with the Employee Ethics Policy)	Legal	4 years	December 2013	December 2017
Disciplinary Action Disclosure Statement (for use with the Employee Ethics Policy)	Legal	4 years	December 2013	December 2017
Code of Ethics for Contractors	Legal	4 years	March 2015 September 2014	March 2019 September 2018
Contractor Annual Ethics Compliance Statement	Legal	4 years	March 2015 September 2014	March 2019 September 2018
Expenditure Reporting Memorandum	Legal	4 years	March 2015 September 2014	March 2019 September 2018

BOARD POLICIES	STAFF SPONSOR	APPROXIMATE INTERVAL BETWEEN COMPREHENSIVE REVIEWS	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEW ⁱ	DATE TO BEGIN NEXT REVIEW ⁱⁱ
Expenditure Reporting Form for Contractors	Legal	4 years	March 2015 September 2014	March 2019 September 2018
Disclosure Statement for Brokers and Financial Advisors and Financial Providers	Legal	4 years	March 2015 September 2014	March 2019 September 2018
INVESTMENTS				
General Authority Resolution (GAR TRS 477)	Financial; Investments	2 years	September 2014	September 2016
Investment Policy Statement	Investments	2 years	September 2014	September 2016
Soft Dollar Policy	Investments	3 years	December 2013	December 2016
Proxy Voting Policy	Investments	3 years	December 2013	December 2016
Securities Lending Policy	Financial; Investments	3 years	December 2013	December 2016

ⁱ Reviews scheduled or rescheduled to begin and to end at the meeting when the current Policy Review Schedule is approved are assumed to have been completed at that meeting, so that date is shown in this column, "Date of Last Policy Committee Comprehensive Review."

ⁱⁱ Initial review and discussion of the applicable policy occurs at the Board committee level on or about the date listed. Reviews may continue throughout one or more subsequent meetings. ~~The next review is scheduled for the nearest next quarterly meeting, when the Policy Committee would normally meet, if the review cycle falls between quarterly meetings.~~

ⁱⁱⁱ ~~Government Code § Section~~ 2001.039, ~~Gov't Code~~, requires a comprehensive rule review every ~~four~~4 years. ~~TRS reviews its rules by chapter.~~

^{iv} ~~The Chapter Review Date is the date the last Adopted Review Notice was filed with the Secretary of State, is the official completion date of the last rule review, and is the date from which the deadlines for the next rule review are calculated. The Chapter Review Date for~~The last four-year review of Chapter 53 of TRS' rules is ~~was completed on~~ December 18, 2013.

^v The date to begin the next rule review of Chapter 53 is based on the lead time needed to timely complete the review. The next review of Chapter 53 must be completed ~~(and the related Adopted Review Notice must be filed)~~ by December 18, 2017.

^{vi} ~~The last review of the rules in Chapter Review Date for Chapters 21-51 was completed on of TRS' rules is~~ November 24, 2014.

^{vii} ~~The date to begin the next rule review of Chapters 21-51 is based on the lead time needed to timely complete the review. The next review of Chapters 21-51 must be completed (and the related Adopted Review Notice must be filed) by~~ November 24, 2018.

ATTACHMENT

**TEACHER RETIREMENT SYSTEM OF TEXAS
POLICY REVIEW SCHEDULE
REVIEWS SCHEDULED TO BEGIN IN 2015-2016**

DATE TO BEGIN NEXT REVIEW	BOARD POLICIES	STAFF SPONSOR	DATE OF LAST POLICY COMMITTEE COMPREHENSIVE REVIEW
November 2015	Mission Statement	Executive Director; Legal	December 2013
	Designation of Key Employees	Executive Director	December 2013
April 2016	Authorization to Approve and Sign Vouchers	Financial; Legal	April 2013
September 2016	Performance Incentive Pay Plan	Executive Director; Investments; Human Resources; Legal	September 2015
	Investment Policy Statement	Investments	September 2014
	General Authority Resolution (GAR)	Financial; Investments	September 2014
December 2016	Soft Dollar Policy	Investments	December 2013
	Proxy Voting Policy	Investments	December 2013
	Securities Lending Policy	Financial; Investments	December 2013