

TITLE 34. PUBLIC FINANCE
PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

34 TAC §31.3

The Teacher Retirement System of Texas (TRS) proposes to amend §31.3 (relating to Return-to-Work Employer Pension Surcharge) under Subchapter A (relating to General Provisions and Procedures) of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

TRS proposes to amend §31.3 to conform with legislation passed during the regular session of the 89th Legislature. Specifically, House Bill 2 (HB 2) repealed Government Code §825.4092(f). This subsection was originally added in 2021 by Senate Bill 202 (SB 202). Subsection 825.4092(f), as added by SB 202, prohibited TRS employers from directly or indirectly passing on the cost of pension or health care surcharges to TRS retirees they employ. To implement SB 202, TRS added this “pass-through prohibition” to §31.3 and §41.4 (relating to Employer Health Benefit Surcharge), which is also proposed for amendment elsewhere in this issue of the *Texas Register*. Because HB 2 repealed Subsection 824.4092(f), TRS staff proposes to remove this provision from §31.3(e) as well.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed amended rule will be for the proposed amended rule to conform with statute.

Mr. Green has also determined that the public will incur no new costs as a result of complying with the proposed amended rule. While it is possible that TRS retirees employed by TRS-covered employers may begin to have the cost of pension or health care surcharges passed on to them by their employers, this change results from the underlying change to statute made by HB 2. TRS’ proposed amendment to §31.3 simply implements this change.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amended rule. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rule is in effect, the proposed amended rule will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

The proposed amendment will limit the current scope of proposed amended §31.3 because it will remove the pension surcharge pass-through prohibition provision from its requirements as HB 2 has removed that requirement from law.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because the proposed amended rule does not impose a cost on regulated persons.

COMMENTS

TRS requests written comments regarding the proposed amended rule. The comments may include information related to the costs, benefits, or effects of the proposed amended rule, including any applicable data, research, or analysis, from any person required to comply with the proposed amended rule or any other interested person.

Comments and information regarding the cost, benefit, and effect of the rule may be submitted in writing to Brian Guthrie, TRS Executive Director, PO Box 149676, Austin, Texas 78714-0185. Written comments and cost/benefit information must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amended rule is proposed under the authority of Section 2.20(c) of House Bill 2, 89th Legislature, Regular Session; Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; Government Code §825.4092, which relates to employer contributions for employed retirees; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed amended rule affects the following statute: Government Code §825.4092, which relates to employer contributions for employed retirees.

§31.3. Return-to-Work Employer Pension Surcharge

(a) For each report month a retiree is employed by an employer for more than 92 hours in a calendar month and that retiree is not exempt from surcharge under subsection (b) of this section, the employer shall pay to TRS a surcharge based on the compensation paid to the retiree during that report month. The criteria used to determine if a retiree is working more than 92 hours in a calendar month are the same as the criteria for determining one-half time employment under §31.13 of this title (relating to One-half Time Employment) even if the retiree's employment also qualifies for an exception under §31.14 of this title (relating to Full-time Employment after 12 Consecutive Month Break in Service), or §31.15 of this title (relating to Tutors under Education Code §33.913).

(b) Employers are not required to submit employer surcharges based on the employment of a retiree during a calendar month if:

(1) the retiree works 92 hours or less during the applicable report month;

(2) the retiree retired prior to September 1, 2005;

(3) the retiree is employed solely as a substitute and that employment meets all the requirements §31.12 of this title (relating to Substitute Service) even if the retiree's substitute employment also qualifies for another exception under Subchapter B of this chapter (relating to Employment After Retirement Exceptions);

(4) the retiree is employed in multiple positions during the calendar month and does not exceed the limits for such combined employment under §31.19 of this title (relating to Combining EAR Exceptions and Employer Surcharges); or

(5) the retiree's employment is in a position that qualifies as a federally-funded COVID-19 position under §31.16 of this title (relating to Federally-funded COVID-19 Personnel) and Government Code §824.6021.

(c) The amount of the employer surcharge that an employer must contribute to TRS for each retiree subject to surcharge under this section is equal to the sum of the compensation paid to the retiree during the report month multiplied by the member contribution rate in effect for the report month plus the compensation paid to the retiree during the report month multiplied by the state contribution rate in effect for that report month.

(d) If a retiree is employed concurrently in more than one position, the employer surcharge is owed if the combined employment exceeds the monthly limits described by §31.19 of this title. If the employment is with more than one employer, the employer surcharge is owed by each employer.

~~[(e) Employers shall not directly or indirectly pass the cost of the employer surcharge under this section on to the retiree through payroll deduction, by imposition of a fee, or by any other means designed to recover the cost.]~~

CERTIFICATION

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.