

TITLE 34. PUBLIC FINANCE
PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.4

The Teacher Retirement System of Texas (TRS) proposes to amend §41.4, relating to Employer Health Benefit Surcharge, under Subchapter A (relating to Retiree Health Care Benefits (TRS-CARE)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

TRS proposes to amend §41.4 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 Specifically, House Bill 2 (HB 2) repealed Government Code §825.4092(f).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 §41.4 and to §31.3 (relating to Return-to-Work Employer Pension 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 Because HB 2 repealed Subsection 824.4092(f), TRS staff proposes to remove this provision from §41.4(i) as well.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended §41.4 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 proposed amended §41.4 will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting proposed amended §41.4 will be that the rule will conform with recent statutory changes.

Mr. Green has also determined that the public will incur no new costs as a result of proposed amended §41.4. 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 §41.4 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 proposed amended §41.4. 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 proposed amended §41.4. 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, proposed amended §41.4 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 §41.4 because it will remove the health 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 proposed amended §41.4, 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 proposed amended §41.4 because it 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 proposed amended 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

Proposed amended §41.4 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

Proposed amended §41.4 affects the following statutes: Government Code §825.4092, relating to employer contributions for employed retirees.

§41.4. Employer Health Benefit Surcharge

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

(b) For each report month a retiree is enrolled in TRS-Care and working for an employer for more than 92 hours in that calendar month, the employer that reports the employment of the retiree on the Employment of Retired Members Report to TRS shall pay monthly to the Retired School Employees Group Insurance Fund (the Fund) a surcharge established by the Board of Trustees of TRS.

(c) The criteria used to determine if the retiree is working more than 92 hours in that 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).

(d) The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is working for more than 92 hours in that calendar month and who is considered an employee of that employer under §824.601(d) of the Government Code.

(e) The surcharge under this section is not owed:

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

(2) by an employer for a retiree reported as working under the exception for substitute service as provided in §31.12 of this title (relating to Substitute Service) unless that retiree combines substitute service under §31.12 of this title with other non-substitute employment with the same or another employer or third party entity in the same calendar month;

(3) by an employer for any retiree that is employed in multiple positions during a 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

(4) by an employer for any service retiree that is employed 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.

(f) If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

(g) If a retiree who is enrolled in TRS-Care is employed concurrently by one or more employers in more than one position, the surcharge is owed if the combined employment exceeds the limits for such combined employment under §31.19 of this title.

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

~~[(i) Employers shall not directly or indirectly pass the cost of the 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.