Post-Retirement TRS Employment:
Improving Regulation & Providing TRS Fund Protection

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An MEA-MFT Proposal for the 2007 Legislative Session
Presented to the SAVA Committee by Tom Bilodeau, MEA-MFT Research
MEA-MFT, 1232 E 6th Avenue, Helena, MT 59601 (442-4250/800-398-0826)
tbilodeau@mea-mft.org

BACKGROUND

TRS benefits and funding policy is intended to provide a sound and equitable and adequate retirement benefits for members based on normal service and salary levels. Over recent years it is believed that dozens of TRS retirees – maybe more – have manipulated final average compensation levels and post-retirement TRS employment income through use of cash and non-cash payments. These practices undermine broad benefit objectives of the TRS and ultimately undermine the financial foundations and equity of TRS funding structures.

1. PROBLEM

Final average compensation "spiking" is ostensibly limited by TRS's rule limiting annual growth in salary to 10% per year over the last four years of employment. Unfortunately, the 10% growth limit has been used as a target growth amount for many individual retirees. This individual annual salary growth is unanticipated by the actuary, available to only a select few, and imposes lifetime additional costs on the TRS fund.

On-going post-retirement employment in TRS covered positions is ostensibly restricted by the "1/3rd final earnings limit" provided in 19-20-731(1) MCA. This limitation effectively phases-out and terminates a retiree's TRS retirees TRS benefits if the retired member earns more than 1/3rd of his/her FAC in a TRS covered position during a single fiscal year. Use of indirect compensation has allowed a select minority of TRS retirees to:

- accelerate their retirement date and arguably evade IRS "bona fide retirement" rules,
- avoid strict application of 19-20-731(1) MCA limitations ,
- substantially increase lifetime TRS benefit payments compared to otherwise actuarially anticipated retirement/service period assumptions,
- continue in TRS covered employment but not provide employer or employee contributions to the TRS fund, and
- delay or preclude the hire of new "active" staff in fully contributing TRS positions.

On-going post-retirement employment of TRS retirees is a special benefit available to a select few within the TRS system, increases TRS projected benefit costs and undermines funding for the TRS.

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2. PROPOSED CHANGE – WHAT THE PROPOSED LEGISLATION WOULD DO

The proposed legislation would amend 19-20-731(1)(a) MCA to:

- require a bona fide retirement and break of service of 6 months or more before a school or special education coop retiree can be employed in a part-time TRS covered position in the schools or education coops,
- exempt “substitutes” and university employees from the proposed six-month break in service regulation; and
- count the value of taxable fringe benefits (remuneration for auto or housing expenses, annuities, professional dues payments, day-care, lodging or travel/entertainment expenses, or like payments)

And amend 19-20-731(2) MCA to require full employer and employee TRS contributions (at the same rates as charged for active employees under TRS) for all school or coop employed post-retirement part-time TRS employees.

Finally, the proposal amends 20-3-324 MCA to empower local school and coop boards to limit FAC year compensation and post-retirement compensation as provided under 19-20-731(1)(a) MCA (as revised by this proposal), and to collect contributions without benefit adjustment until and unless the individual reaches a post-retirement period of 5 years.

3. APPLICABLE MCA PROVISIONS – tentative/suggested statutory changes

"19-20-102. Retirement system – policy.
(2) It is the policy of the state to:

(a) provide equitable retirement benefits to members of the teachers' retirement system based on each member's normal service and salary;

(b) limit the effect on the retirement system of isolated salary increases received by a member through events including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and

(c) limit the total compensation, including fringe benefits, that a retired member may earn after retirement in a position that would normally be included in the teachers' retirement system to the amount determined under 19-20-731(1)(a)."

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"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits. (1) (a) Except as otherwise provided in this section, a retired member who has received at least 6 monthly retirement benefits may be employed part-time by a school district or state agency, or by a unit of the university system without a six month benefits receipt status in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

~~(a)~~(i) one-third of the sum of the member's average final compensation; or

~~(b)~~(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purpose of this subsection (1), the maximum compensation a retired member may earn under subsection (1)(a), without an adjustment of retirement benefits, includes all remuneration paid to the retired member, including annuities and all allowances for motor vehicles and housing, plus the value of all taxable fringe benefits, including but not limited to:

(i) professional membership dues;

(ii) maintenance;

(iii) day care;

(iv) reimbursements for nonwork-related motor vehicle, travel, lodging, or entertaining expenses; or

(v) any similar payment for any form of maintenance, allowance, or expense.

(c) A retired member hired on a temporary basis to replace a teacher under contract, as a substitute teacher, and retired members hired by an employer of the university system are exempt from the 6 month waiting provision of this subsection.

(2)(a) For each retired member hired by a school or education coop under this subsection, and each month the employer must submit the following contributions to the retirement system:

(i) from the retired member's compensation a percentage equal to the employee contribution under section 19-20-602, and

(II) contribute to the system a percentage of the compensation paid to the retired member each month equal to the employer's contribution rate under section 19-20-605.

"20-3-324. Powers and duties.

(30) negotiate preretirement and postretirement contracts that limit compensation included in the calculation of average final compensation and limit compensation earnable in a post retirement position, without an adjustment of retirement benefits, as provided in 19-20-731.

4. PROPOSAL ONLY AFFECTS SCHOOL OR COOP EMPLOYED TRS MEMBERS

This proposal only affects school or educational coop members of the TRS. University faculty and administration are not included in the scope of this proposal due to ORP program, declining number of university employed TRS membership, and common university practice of phased-in retirement on a 1/3rd post-retirement part-time contracted basis.

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5. PROPOSAL WILL MODESTLY INCREASES SCHOOL EMPLOYER CONTRIBUTIONS LARGELY PAID BY THE COUNTY SCHOOL RETIREMENT LEVY & EMPLOYEE CONTRIBUTIONS FROM EMPLOYEES.

It is estimated that this proposal will require a modest increase (approximately $400,000 per year) in employer contributions paid to the TRS system largely from county retirement levies.

6. PROPOSAL IS NOT KNOWN TO HAVE BEEN INCLUDED IN PART, OR WHOLE BY PREVIOUSLY PROPOSED LEGISLATION.

7. HOLD-OVER LEGISLATOR – BILL DRAFT REQUEST

At this point, no holdover legislator has been contacted regarding a bill request.