

**TEACHERS' RETIREMENT BOARD MEETING**  
**Friday, February 19, 2010**

**BOARD MEMBERS PRESENT:**

Kari Peiffer - Chair  
Scott Dubbs  
Jeff Greenfield  
Darrell Layman  
Robert Pancich

**ABSENT:**

James Turcotte

**STAFF PRESENT:**

David Senn - Executive Director  
Tammy Rau - Deputy Executive Director  
Denise Pizzini - Chief Legal Counsel  
Dan Gaughan - Accounting / Fiscal Manager  
Charlene Welch - Executive Assistant

**OTHERS PRESENT:**

Rachel Weiss - Legislative Services  
Mick Robinson - Montana University System  
Mark Bruno - OBPP  
Jerry Scott - ACE  
Darrell Rud - SAM

**CALL TO ORDER**

Chairperson Kari Peiffer called the Teachers' Retirement System (TRS) Board meeting to order at 8:33 AM, in the Teachers' Retirement System Conference Room, 1500 East 6<sup>th</sup> Avenue, Helena, Montana.

**Adopt Agenda:**

Chairperson Peiffer asked for additions or changes to the Agenda for February 19, 2010. Chairperson Peiffer pointed out the date of the minutes to be approved was incorrect on the tentative agenda sent to members. The correct date was November 13, 2009, not November 16, 2009. Mr. David Senn inquired since this was a short Board meeting if the Board wanted to work through the lunch hour and adjourn early since the weather report stated a change in the weather. It was the consensus of the Board to work through the lunch hour. Chairperson Peiffer requested a motion to adopt the revised Agenda.

**MOTION/VOTE:**

Member Jeff Greenfield moved to adopt the Agenda with the corrections noted. Seconded by Member Dubbs, the motion passed unanimously.

Approval of Minutes:

Chairperson Peiffer called for changes to the November 13, 2009 Board Meeting Minutes. Finding none, Chairperson Peiffer called for a motion to adopt the November 13 board minutes.

**MOTION/VOTE:**

Member Greenfield moved to adopt the November 13 board minutes. Seconded by Member Pancich, the motion passed unanimously.

**PUBLIC COMMENT ON BOARD RELATED ITEMS**

Chairperson Peiffer called for public comment on Board related items. No public comments were made.

**EXECUTIVE DIRECTOR'S REPORT**

Funding and Benefit Policy Review/Amendments:

Mr. Senn reviewed the current Funding & Benefit Policy and the proposed updates. Mr. Senn explained the proposed update included transferring the policy to the new format which included numerous modifications to reference the statutory responsibilities and statutory limitations of the TRS Board.

**MOTION/VOTE:**

Member Dubbs moved to table action on the Funding and Benefit Policy until the May 14, 2010 Board meeting to give Members time for review and to submit additional changes to the Executive Director. Seconded by Member Greenfield, the motion passed unanimously.

University System Optional Retirement Plan (ORP) Supplemental Contribution Valuation:

Mr. Senn briefly reviewed the history of University System ORP and specifically Section 19-20-621, MCA. The law requires the TRS Board to periodically examine the supplemental employer contribution rate and propose modifications to the legislature as needed to preserve amortization of the university's system's past service liability by July 1, 2033. Mr. Senn reviewed the preliminary actuarial report on the university supplemental employer contribution rate based on the July 1, 2009 Actuarial Valuation. The report showed the rate would need to increase 3.8%, from 4.72% to 8.52%. Mr. Senn commented the final study will be completed together with the July 1, 2010 Actuarial Valuation, and may show a slightly smaller required increase.

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Mick Robinson, Deputy Commissioner for Fiscal Affairs Montana University System spoke about the employer cost and where it would have to come from. Mr. Robinson stated the majority of the funding would have to come from the General Operating Fund which breaks down to 40 percent coming from the State General Fund and 60 percent from yearly tuition. The University System is looking at budget cuts, so the 8 million dollar increase needed would add up to a 4 percent raise in tuition rates all across the University system, to all of the campuses. Mr. Robinson stated this was an issue that he wanted to advise caution on as the University tuitions are basically the bread and butter of the University System and raising tuition can mean lower student enrollment rates.

TRS Board 2011 Legislative Concepts:

Mr. Senn reported the Executive Planning Process (EPP) requires state agencies to have their conceptual legislative proposals to the Governor's Budget Office by April 15, 2010. Mr. Senn recommended three conceptual legislative proposals.

1. Funding Proposal

- Increase employer contribution rates incrementally over several years,
- Define retired member's compensation to include all compensation paid to a retiree by a TRS covered employer, and
- Repeal all or most of the exemptions to the 10% salary cap.

Mr. Senn gave the Board various examples of how each item could be structured, with a number of positive and negative ways it could affect TRS and its members.

2. Housekeeping Proposal

- Mr. Senn reported the housekeeping proposal was still a work in progress, but he anticipated that this session the proposal would include necessary changes to address potential IRS rule changes, clarifications to the Family Law Order provisions, definitions, and other statutory clarifications.

3. Increase the University System's supplemental contribution rate

- The required rate increase will be determined by the actuary once the July 1, 2010 Actuarial Valuation is complete. Preliminary estimates based on the July 1, 2009 Valuation suggest the rate could increase by 3.80%.

Other Legislative Proposals:

Mr. Senn presented a brief overview of other proposals or suggestions that had been recommended by entities other than the TRS Board.

NCTR Legislative Committee Meeting:

Mr. Senn stated that while he was not present for this year's Legislative Committee meeting, he did receive several resource papers that were relevant to the issues TRS will be facing in the near future. Mr. Senn proceeded to discuss some of the more pertinent items he felt related to the issues TRS is dealing with at this time.

Executive Summary:

Mr. Senn discussed the financial statement concerns around the Annual Required Contribution Rate (ARC), its definition, and how not contributing the ARC could affect the State's bond rating.

In February 2010, TRS received notice that the Legislative Audit Committee had requested a performance audit of retirement benefit calculations for participants in Montana state government defined benefit pension plans. The auditors informed TRS they would get in touch within two weeks to discuss the process and best method to proceed with the assessment.

Mr. Senn also relayed to the Board that TRS has expanded the number of retirement seminars to nine this year. These additional seminars allow TRS to assist more members not only in the bigger school systems but it also makes it more economical for the smaller school systems to attend due to less travel time for the members.

**BREAK 10:00: AM**

**LEGAL COUNSEL'S REPORT**

Summary of Legal Issues:

Ms. Pizzini informed the Board that oral arguments on Merle Farrier's petition for judicial review were made on December 1, 2009. A ruling has not yet been received.

Ms. Pizzini informed the Board that the hearing date and pre-hearing schedule in the Lynn Mavencamp matter has been extended. Hearing is now scheduled for June 10 and 11, 2010.

Ms. Pizzini updated the Board on the resolution of the Wesley Young matter. Mr. Young signed the settlement agreement as proposed and approved by the Board at the November 2009 Board meeting. In December, 2009, Mr. Young notified TRS that he would like to make a lump-sum repayment of the amount owed by him pursuant to the settlement agreement rather than have his retirement benefits actuarially adjusted in the future; Mr. Young made the lump-sum repayment in late December 2009.

**INDIVIDUAL PETITION**

Mr. Jerry Scott – ACE Consortium Director:

Mr. Senn gave a brief history of Mr. Scott's petition to the TRS Board. Mr. Scott is a working Retiree receiving a monthly benefit from TRS while working as the Director of the Alliance for Curriculum Enhancement (ACE). Mr. Scott's position as the ACE Director has been reported to PERS since July 1, 1998, instead of TRS.

It is TRS staff's belief that a director position for a full-service education cooperative organized, funded, and operated under Montana's public education laws is required to be reported to TRS, and that Mr. Scott should have been reported to TRS with respect to his ACE Director position from his date of hire by ACE in 1998.

Mr. Scott petitioned the Board to allow the continued reporting of his position to PERS until he terminates that position or, in the alternative, that the Board determines his position is reportable to TRS only from the effective date of certain statutory amendments made in the 2009 legislative session.

Mr. Scott stated he did not concur with TRS staff that his ACE position was reportable to TRS from his date of hire, though he stated he does understand how the law reads at the present time. Mr. Scott asked whether it would not be appropriate to "grandfather" individuals in positions, such as his, that were reported to PERS prior to the statutory amendments in 2009, as had been done with elected County Superintendents when the law was amended to terminate their right to elect to participate in either TRS or PERS. He indicated he was not aware the 2009 Legislature was addressing this issue until after the session was over, and it was impossible for him to testify on grandfathering current positions. Mr. Scott stated that, in his opinion, TRS or PERS membership before 2009 should be allowed to remain the same.

Mr. Scott also informed the Board that the ACE Director before him was engaged as an independent contractor and was receiving a monthly retirement benefit from TRS. Mr. Scott indicated that when he took the position as ACE Director, he did not do so as an independent contractor, though he might have had he known the position was reportable to TRS. Mr. Scott acknowledged that he has no documentation of any determination or decision that his position as ACE Director was reportable to PERS and not to TRS.

Ms. Pizzini provided the Board with a very brief overview of the history of the statutory provisions pertaining to education cooperatives in general, and "special education cooperatives" and full-service education cooperatives, which are included in Title 20, Chapter 7, Part 4 "Special Education for Exceptional Children," in particular. Ms. Pizzini further informed the Board that there are a number of points in this matter that require further factual development and

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investigation by TRS staff before a final staff recommendation can be made. Therefore, TRS staff is currently recommending that the Board defer action on this matter until the next Board meeting to allow TRS staff to complete review and provide a comprehensive staff recommendation to the Board.

Mr. Scott asked, if the decision on his petition was held over until the May TRS Board meeting, would he be allowed to continue to receive TRS benefits and remain in PERS? Mr. Senn replied he would be allowed to continue to receive TRS benefits until the Board had made a final decision. Mr. Scott inquired about the impact on his TRS retirement benefit if the Board does not approve his petition and what actions would be considered appropriate by the TRS Board. Mr. Scott was advised that he could be returned to active member status with TRS for all or some of the period of his employment with ACE and could be required to repay all retirement benefits he received during that time, plus interest, and that the employer and employee contributions that would have been paid to TRS on his compensation from ACE could be required to be paid, with interest. He was further informed that he would receive additional creditable service for any period of time for which he is returned to active status.

Chairperson Peiffer asked Mr. Scott if ACE is an Education Cooperative. Mr. Scott acknowledged that it was, with emphasis on teacher's training and curriculum. Mr. Scott gave a brief summary on the history of ACE. Member Pancich inquired if other Education Cooperatives in Montana were reportable to TRS, to which Mr. Senn replied that they were.

Denise Pizzini was asked what responsibility ACE or the Joliet School District has with regard to correctly or incorrectly reporting Mr. Scott's position for retirement purposes. Ms. Pizzini responded that the reporting responsibility lies primarily with the employer, but TRS must recover the overpaid benefits from the retired member. The employer would be held responsible for reporting past wages and the employee and employer contributions due on those wages.

Chairperson Peiffer inquired if there were any other questions for Mr. Scott, Mr. Senn, or Ms. Pizzini from the Board on this petition. Finding none, Chairperson Peiffer called for a motion.

**MOTION/VOTE:**

Member Greenfield moved to have TRS staff fully investigate the reasons for the ACE Director position not having been reported to TRS at the time Mr. Scott was hired to fill it, and to provide a staff recommendation to the Board for final action at its next board meeting. Seconded by Member Pancich, the motion passed unanimously.

**Mason Stipend – University of Montana:**

Mr. Senn discussed briefly the history of the Mason Stipend, how it is awarded, and to whom. The University of Montana has reported the stipend to TRS since

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1991 as earned compensation, even after the 2001 legislative changes to exclude bonuses and incentives from the definition of earned compensation unless they are part of a series of annual payments. In 2009, the TRS Board adopted Administrative Rules to define exactly what was legally permitted to be reportable and what was not.

Professor Natelson, who was awarded the stipend for fiscal years 2008 and 2009, has petitioned to be allowed to include the stipend in the calculation of his average final compensation. Based on the history of the university's reporting the Mason stipend since 1991 to the present, and the fact that administrative rule 2.44.530, which sets forth the criteria for determining whether a bonus or incentive is paid as part of a series of annual payments, was not adopted by the Board until October 15, 2009, staff recommends the Board find that the Mason Stipend is not includable as earned compensation pursuant to applicable law, but that the compensation reported and contributions received by TRS for the Mason Stipend amounts up to the effective date of the administrative rule not be adjusted.

**MOTION/VOTE:**

Member Dubbs moved to accept staff recommendations regarding the Mason Stipend. Seconded by Member Layman, the motion passed unanimously.

**OTHER BUSINESS**

Out of State Travel Authorization:

Mr. Senn recommended Denise Pizzini attend the 2010 NAPA Conference in Asheville, NC, June 22 – 25, 2010.

**MOTION/VOTE:**

Member Layman moved to approve authorization for out of state travel to the NAPA conference for Denise Pizzini. Seconded by Member Greenfield, the motion passed unanimously.

Joint Issues Committee Members:

Members Scott Dubbs and former Member Tim Ryan currently serve on the Joint Issues Committee. Member Dubbs stated he was still interested in being part of the Committee. Chairperson Peiffer acknowledged she was also interested in serving.

**MOTION/VOTE:**

Member Robert Pancich moved to accept Member Dubbs and Chairperson Peiffer as appointed members of Joint Issue Committee. Seconded by Member Darrell Layman, the motion passed unanimously.

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Investment Report:

Member Turcotte was not in attendance. Mr. Senn provided the Board with handouts pertaining to the investment report. He also gave a concise summary that included how TRS investments have been doing since the first of January 2010 to present.

Financial Statements, Budget, Delinquent Agency, and Travel:

Dan Gaughan presented the financial report to the Board. TRS had a 14 percent positive return equal to about a 300 million increase in the value of TRS assets although the investment balance is substantially lower than last year at this same time. Investment earnings were the biggest change from last year. Mr. Gaughan stated that year to date through January 2010 TRS revenue had a positive increase of 15 million.

Mr. Gaughan also noted that TRS has 1 ½ positions open which yield savings of about \$5,600 with additional savings until they are filled. Printing was higher for 2009 because of the decision to publish two handbooks, one for the active member and one for the retired member. This approximately doubled the projects printing costs.

Mr. Gaughan concluded his report stating Cohagen Elementary was the only delinquent agency this quarter. TRS had gotten their reports but no payments as of yet. The TRS staff is presently in communication with Cohagen Elementary to acquire the funds but to also help work out a system to keep them current.

Strategic Plan Status Report:

Tammy Rau presented a handout to the Board with a list of objectives and strategies the Board established last year. Ms. Rau reported on what had been accomplished during the past year and how the TRS staff was working to complete each item in the Strategic Plan.

Next Meeting Dates:

Mr. Senn addressed the possibility of the joint TRS, PERS, and BOI board meeting and suggested it be held the afternoon of May 13, 2010, with the regular TRS Board meeting following May 14. Actuaries from both TRS and PERS will be at the May meeting to discuss their individual Experience Studies and could explain the process to the three Boards. Mr. Senn thought it would be an interesting and valuable session to observe how the different systems handle these same issues.

Mr. Senn also requested the Board consider changing the September 10, 2010, meeting to September 24, or October 1, 2010. Mr. Senn explained in the past, the Actuaries have presented the Valuation report at the November meeting, at which time the report has already been made public, and the legislative committees have heard testimony on what changes if any need to be made to the TRS. The earlier date would give the Board time to consider any changes

recommended by the actuary and to present their own recommendations to the legislative interim committee. Hearing no objections, Chairperson Peiffer directed the September meeting be rescheduled for Friday, September 24, 2010.

### **RETIREMENT REPORT**

#### **Service Retirements, Adjustments, and Survivor Benefits:**

Mr. Senn presented the Service Retirements and Survivor Benefits report for the last quarter.

#### **Executive Session to Discuss Disability Applications:**

Member Greenfield indicated he has a conflict of interest with respect to the disability application of Mr. Loren D. Brum in that he is a member of his collective bargaining unit, and as a union representative, he has advised Mr. Brum with respect to his disability application.

### **CLOSED MEETING**

Chairperson Peiffer directed the meeting to be closed at 12:11: PM to discuss and review disability applications since the individual's right to privacy of information pertaining to benefits clearly exceeds the merits of public disclosure.

### **OPEN MEETING**

Chairperson Peiffer reopened the meeting to the public at 12:14: PM. Ms. Pizzini noted for the record that Member Greenfield has a conflict of interest with respect to participating in Board actions related to the Board's consideration of the disability application of Loren D. Brum. Member Greenfield indicated that, as a union representative, he has worked with Mr. Brum over the last couple of years, including as an advisor regarding his potential application for retirement benefits. Due to the conflict of interest in this matter, member Greenfield abstained from discussion and voting.

#### **Applications for Disability Retirement Benefits:**

#### **MOTION/VOTE:**

Member Pancich moved to approve Loren D. Brum's disability application. Seconded by Member Layman, the motion passed unanimously, with Member Greenfield abstaining.

### **ADJOURNMENT**

#### **MOTION/VOTE:**

Member Dubbs moved to adjourn meeting. Seconded by Member Greenfield, the motion passed unanimously.

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The meeting was adjourned at 12:16: PM

Chair: \_\_\_\_\_

Executive Director: \_\_\_\_\_