

**Teachers' Retirement Board Meeting
TRS Conference Room – Conference Call
1500 Sixth Avenue
Helena, Montana
May 13, 2011**

BOARD MEMBERS PRESENT

Kari Peiffer, Chair
Scott Dubbs
Darrell Layman
Jeff Greenfield
Robert Pancich
James Turcotte – via conference call

ABSENT

None

STAFF PRESENT

David Senn, Executive Director
Tammy Rau, Deputy Executive Director
Denise Pizzini, Chief Legal Counsel
Bill Hallinan, Information Technology Manager
Dan Gaughan, Accounting/Fiscal Manager
Karla Scharf, Retired Payroll Manager
Natalie Chamberlain, Benefit Specialist
Janet Cooper, Benefits Officer
Johnelle Sedlock, Benefits Officer
Kristin Williams, Benefits Officer
Sandy Donahue, Benefit Specialist
Jean Boucher, Accountant
Kim Lloyd, Benefit Technician
Rex Merrick, IT Specialist
Melissa Michalk, Executive Secretary

OTHERS PRESENT

Mark Bruno, OBPP
Bob Vogel, MTSBA
Paula Johnston, Whitehall Schools
Jim Kerins, CMS

CALL TO ORDER

Chairperson Kari Peiffer called the meeting to order at 8:34 a.m., in the Teachers' Retirement System Conference Room, 1500 East 6th Avenue, Helena, Montana.

Adopt Agenda

Chairperson Peiffer asked for additions or changes to the Agenda for May 13, 2011. Finding none, Chairperson Peiffer requested a motion to adopt the Agenda.

MOTION/VOTE: Member Jeff Greenfield moved that the TRS Board adopt the Agenda for May 13, 2011. Seconded by Member Darrell Layman, the motion passed unanimously.

Approval of February 11, 2011, Minutes

Chairperson Peiffer called for changes to the February 11, 2011, Board Meeting Minutes. Member Scott Dubbs stated that for future minutes, the status of the bills as of the date of the board meeting does not need to be included. Chairperson Peiffer requested a motion to adopt the February 11, 2011, Board Minutes.

MOTION/VOTE: Member Darrell Layman moved that the TRS Board adopt the February 11, 2011, Board Meeting Minutes. Seconded by Member Jeff Greenfield, 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

AFC Used to Calculate Retirees' 1/3 Postretirement Earnings Limit

Mr. David Senn reported that members with a pattern of returning to work and retiring again would have more than one Average Final Compensation (AFC) on file, which raises the question of which AFC would be used to calculate the maximum a retiree could earn in postretirement employment pursuant to 19-20-731. Because the largest AFC on file would be most advantageous to the member if used to calculate the maximum they could earn, Mr. Senn recommended that if there are multiple AFCs on file, that the largest amount be used to calculate the earnings limit. Member Greenfield completely agreed that it was the right thing to do. Member Dubbs pointed out that he would like to discuss this issue more because his concern is that an individual would try to somehow take advantage of the system and he would not want to open that door. Member Turcotte mentioned that TRS has changed the statutes so that in 2013, additional contributions will be collected for retirees returning to work, and that using the larger amount would potentially increase the contributions collected by TRS. Mr. Senn added that, if a member retires with multiple AFCs on file, there will have been two benefit calculations made to arrive at the final benefit amount, and that the amount they are eligible to earn in a postretirement position will not impact the benefit payable but could potentially increase the contributions collected on compensation paid to working retirees.

MOTION/VOTE: Member Jeff Greenfield moved that the TRS Board approve the use of the highest AFC in the calculation of the maximum amount a retired member may earn in postretirement employment. Seconded by Member Robert Pancich, the motion passed unanimously.

MPERA/TRS Memorandum of Understanding

Mr. Senn reported that questions based on the privacy policies adopted by the PERS Board caused both the TRS and PERS Boards to propose similar language in their respective housekeeping bills to allow the exchange of confidential information between these two organizations in order to ensure proper pension plan participation. The legislation requires that the two Boards enter into a memorandum of understanding (MOU) to effectuate the required information sharing; a copy of the proposed MOU was presented for the Board's review. Staff recommends the Board approve the draft MOU, with authorization for staff to work with MPERA to make minor changes that may be required.

MOTION/VOTE: Member Scott Dubbs moved that the TRS Board approve the MPERA/TRS MOU, and to authorize staff to make minor changes if required. Seconded by Member Darrell Layman, the motion passed unanimously.

2011 Post-Session Update

Mr. Senn reported on the status of the bills that TRS was tracking during the 2011 Legislative Session.

Mr. Senn reported that House Bills 86 and 116 passed and will now be implemented. House Bill 86 and House Bill 116 included clarification of the limitations pertaining to postretirement employment, and the reporting requirements applicable to working retirees and their employers. These amendments will assist TRS in the timely identification of retirees who have returned to work, allow greater oversight and compliance with the earnings limitations applicable to working retirees, and provide for timely adjustment or suspension of retirement benefits of retirees who exceed the limitations. In particular, HB 86 includes a new requirement that retirees notify TRS within 30 days of returning to work in a position reportable to TRS, including independent contractor positions. HB 116 contains a new provision stating employers are jointly and severally liable for repayment to the system for any retirement benefits to which the retiree was not entitled, plus interest, for failing to properly report the employment of and compensation paid to a TRS retired member.

Senate Bill 120, effective July 1, 2011, requires contact information for each board member be included in all publications, and on our website. Staff recommended using a state email address so that any correspondence can be promptly imaged in the system. Member Dubbs agreed that a state email address would be appropriate, and that a disclosure statement is necessary to clarify that benefit inquiries need to be directed to the TRS office, and to provide other necessary information regarding the management of communications with Board members. Member Greenfield concurred that a state email address would be the best option. Chairperson Peiffer stated that she would prefer a state email address. Member Turcotte also prefers a state email address, on the state system, because then TRS business emails would be separate from his personal/professional business. Members Pancich and Layman both prefer a state email address.

Outlook for the 2013 Session

Mr. Senn noted that the legislature would need to again address the underfunded status of TRS in the 2013 legislative session, and recommended the Board be prepared to speak to every possible funding option, including options that might be challenged as violating member's contract rights. The Board reviewed the Congressional Research Service report, dated March 31, 2011, on this topic.

Member Dubbs said that he would like to look at the process that was used in Colorado to address issues there, and that it could be a process that TRS may want to study. Member Dubbs mentioned that the actuaries should have a software program that could input various scenarios to help the retirement system decide what they need to do to actuarially fund the system. Member Layman stated that taking options to the members across the state would help inform the membership, the public, and legislators of the problem and the potential solutions. Mr. Senn recommended that the Board meet on September 29, 2011, to discuss plan design with the actuaries, and then discuss a plan of action at their regular meeting on September 30. The Board concurred.

Mr. Bob Vogel, of the Montana School Boards Association (MTSBA), stated that it was nice to have TRS' analysis and help in addressing bills during the legislative session. Mr. Vogel claimed he hoped to convince people that instead of overcorrecting, that just making modifications and minor adjustments would be less detrimental to the retirement systems. Mr. Vogel encouraged the Board to look into VisionNet, Skype, or other types of electronic communications for reaching people and not just try to get to every community in Montana. Mr. Vogel volunteered the MTSBA system, if TRS wanted to make use of it. Mr. Vogel pointed out that VisionNet could tie into a network to get the word out more broadly to TRS members, and that people need to hear good data.

Board Member Workshop – August 10, 2011 (later changed to August 16, 2011)

Mr. Senn mentioned possible topics for discussion that included Succession Planning and Selection and Recruitment, Networking and Outreach, Information Technology with respect to building a new platform or buying an existing one for the TRS pension administration system, Refresher Training on Policies and Updating the Board Policy Handbook, Strategic Planning, and Options for Funding TRS. Member Dubbs suggested scheduling a conference call with the Colorado Retirement System, to ask questions about the processes they went through and legal issues they had to deal with. The Board members agreed to meet on August 9, 2011, for the Board workshop (later changed to August 16, 2011).

Executive Summary

Mr. Senn reported that Janet Cooper was retiring effective May 31, 2011, and that Kristin Williams will be stepping into the Benefit Officer position. Mr. Senn mentioned interviews would take place next week to fill the Administrative Assistant position.

Alternative Work Schedule

Mr. Senn provided the Board with the TRS office staff's summer work schedule.

TRS Newsletter

Mr. Senn reviewed the draft of the next TRS Newsletter with the Board, requesting they review it and send him any suggestions they may have.

OTHER BUSINESS

Contracted Services Agreement – Ice Miller

Ice Miller has been TRS' tax counsel for IRS compliance and other federal issues since 1997. TRS continues to work with two attorneys, Mary Beth Braitman and Terry Mumford. Ice Miller keeps the retirement system apprised of impending and actual modifications to tax law/regulation and modifications to regulatory processes that have an impact on the retirement system, and ensures competent, ready representation of the retirement system with the IRS. Staff recommends the Board approve renewal of our legal services agreement with Ice Miller, based on time and materials not to exceed \$25,000, for fiscal year 2011-12.

MOTION/VOTE: Member Robert Pancich moved that the TRS Board renew the contracted services agreement with Ice Miller. Seconded by Member Darrell Layman, the motion passed unanimously.

Interest Rate Credited to Member Accounts

Each year the Board is required to set the rate of interest that is credited to active member accounts. Historically, the interest rate has been set close to the short-term investment rate earned by the Board of Investments. The Board of Investment's short-term interest year-to-date rate as of April 30, 2011, was 0.31% and has been steadily dropping for the last three years. Staff recommends the interest rate credited to member accounts for the period July 1, 2011 – June 30, 2012, remain at 0.25%.

MOTION/VOTE: Member Darrell Layman moved that the TRS Board maintain the 0.25% interest rate credited to members' accounts. Seconded by Member Robert Pancich, the motion passed unanimously.

TRS 2011-2012 Budget

Mr. Dan Gaughan presented the proposed TRS budget for the fiscal year July 1, 2011, through June 30, 2012. Mr. Gaughan gave a brief summary of the different categories that make up the budget along with a brief explanation of each item and provided additional details on major changes. The 2012 proposed budget was 7.0% greater than the projected expenditures in the current year.

Mr. Bill Hallinan presented the IT section of the budget. Mr. Hallinan discussed the purchase of a Storage Area Network (SAN) backup, which would enable TRS staff to conduct business in spite of a main system crash. Without the SAN, staff would have to wait until an HP representative could travel to the office to fix the problem.

Mr. Gaughan mentioned that he could make amendments to the budget, and that sufficient savings in the current budget allow TRS to make the equipment purchase, scheduled for FY 2012, out of this year's budget.

MOTION/VOTE: Member Darrell Layman moved that the TRS Board accept the TRS 2011-2012 budget. Seconded by Member Jeff Greenfield, the motion passed unanimously.

INDIVIDUAL PETITIONS

Paula Johnston – Request for an Exception to 10% Cap

Ms. Paula Johnston, Whitehall Superintendent and interim elementary principal, requested an exception to the 10% cap due to the fact that the school board asked her to complete the principal's duties for the remainder of the 2010-2011 school year, in addition to her position as superintendent. Ms. Johnston has been the superintendent at Whitehall Public Schools since 2008-2009. Mr. Senn presented a table with her wages for the past four years showing the calculation of the 10% cap. If the 10% cap were applied, Ms. Johnston would have excess earnings of \$3,824.22.

Member Greenfield asked about the difference in excess earnings in regards to how it would affect Ms. Johnston's monthly benefit. Mr. Senn explained that Ms. Johnston had the option of excluding the excess earnings altogether or including them under termination pay option 1 or option 2. By including the excess earnings under option 1, there would be an additional cost to her and the school district to pay the higher contribution rates, \$2,513 for the employee and \$2,536 for the employer, and a monthly benefit increase of \$39.00 per month. By including the excess earnings under option 2, the cost would be at the normal employee/employer contribution rates, with a minimal increase in her monthly benefit. By waiving the 10% cap, no additional contributions would be collected and Ms. Johnston would receive the higher benefit.

Ms. Johnston stated that this was a one-time fix for the district and that she would never do it again. Mr. Senn pointed out that under Administrative Rule 2.44.518, the assignment of additional duties would not exempt her from the 10% cap. Member Dubbs pointed out that this was not just additional duties, but that by the assignment of half of an existing job, she was covering two separate positions. Member Greenfield mentioned that additional funding would be needed to cover the higher benefit amount. Ms. Tammy Rau cited another case of a member in a teaching position acting as the principal/superintendent whose request was denied and thus was moved to a permanent principal/superintendent position. Chairperson Peiffer asked Ms. Johnston if she and her employer were willing to pay \$2,500 to cover the benefit increase. Ms. Johnston said they were; however, the school is under financial stress and to pay an additional \$2,500 would be a hardship on the district. The Board continued to discuss whether this was the assignment of additional duties or a new position. Ms. Pizzini cautioned that while the board has the authority to apply the exceptions stated in administrative rule, staff doesn't believe that Ms. Johnston fits one of those exceptions, and to make an exception beyond what is allowed in law would set a precedent the Board might have to extend to other members in similar circumstances. Member Pancich told Ms. Johnston that Montana has a reputation of people with great work ethics and that Ms. Johnston brought that out here.

MOTION/VOTE: Member Scott Dubbs moved that the TRS Board grant the exception to the 10% Cap for Paula Johnston, which was seconded by Member James Turcotte. However, following discussion of the motion, it did not pass, with a vote of 1-5 - Member Dubbs voting in favor of granting the 10% cap exception, and all other Board Members opposed to the motion.

OTHER BUSINESS CONTINUED

Out-of-State Travel Requests – 2011 NCTR Trustee Workshop July 31 – August 4, & Annual Conference October 10-13

Mr. Senn presented the out-of-state travel requests for the Executive Director and two board members to attend the NCTR Annual Conference to be held in Baltimore, Maryland, from October 8 - 13, 2011. He recommended, however, that four Board members attend the NCTR summer trustee workshop, which was to include training on topics that would be particularly pertinent and valuable to the Board Members right now, and that TRS not attend the 2011 NCTR annual conference. The summer workshop is scheduled for July 31 - August 4, 2011, in Boston, Massachusetts.

MOTION/VOTE: Member Darrell Layman moved that as many board members as are available attend the NCTR summer workshop this year. Seconded by Member Jeff Greenfield, the motion passed unanimously.

Investment Report – James Turcotte

Member Turcotte reported that Gary Buchannan was appointed Chair of the Board of Investments. Mr. Senn reviewed the current investment report from the Board of Investments. Member Turcotte gave a brief summary of issues before the Board of Investments.

Financial Statements, 2010 Budget, Delinquent Agency Reports

Mr. Gaughan presented and reviewed the financial statements, 2010 Budget, and Delinquent Agency Reports with the Board. Mr. Gaughan reported that total revenue was less than last year due to lower investment earnings. Mr. Gaughan stated that the income earned on investments was lower due to less securities trading activity resulting in gains and that the cost of supplies and materials were higher than last fiscal year.

Mr. Gaughan stated that personnel services expense was over budget by \$4,665.00 due to Janet Cooper's position being temporarily double filled and the payout of her termination pay. Mr. Gaughan also noted that most of the operating expenses were in contracted services.

Mr. Gaughan informed the Board that two schools have not submitted contributions due, and one school has been habitually late with its reports this year. Mr. Gaughan also informed the Board that funds were available to purchase equipment with this year's budget and remove it from next year's budget. Chairperson Peiffer and Member Greenfield both agreed that that would be a good idea.

MOTION/VOTE: Member Jeff Greenfield moved that the TRS Board purchase the identified equipment from this year's budget and remove that purchase from next year's budget. Seconded by Member Scott Dubbs, the motion passed unanimously.

Next Meeting Dates

Chairperson Peiffer directed the next regularly scheduled meetings of the TRS Board be scheduled for September 29 and 30, and November 18, 2011.

Tour of TRS Website & Update on IT Status – Bill Hallinan

Mr. Bill Hallinan gave the Board members a tour of the TRS website. Member Layman pointed out that having the account information at the top would be very helpful. Mr. Hallinan acknowledged that there were other minor additions and changes that still needed to be made. Member Dubbs mentioned that having a section for hot topics with links to the relevant information would be a nice addition, with perhaps 3-5 items to keep the public informed of the current important topics.

Strategic Plan Update

Ms. Rau reviewed the Strategic Plan with the Board and went over the items that have been completed since the last Board meeting. Three items were covered in this review: giving the Board members a tour of the TRS Website, establishing a date and possible topics for a summer workshop, and the double filling of a position for two to three months.

LEGAL COUNSEL'S REPORT

Proposed Administrative Rule Revisions

Ms. Pizzini reviewed the proposed changes to the Administrative Rules, most necessary to reflect and clarify new statutory requirements from the 2011 legislative session. Ms. Pizzini explained the new provisions, expected to be subchapter 8 of the TRS ARMs, specifically related to postretirement employment. Ms. Pizzini said TRS would publish the new subchapter 8 as a separate rules notice to ensure that interested parties have particular notice of this group of proposed rules, and specific opportunity to provide comments and recommendations on postretirement administrative processes proposed to be used by TRS.

MOTION/VOTE: Member Robert Pancich moved that the TRS Board publish the proposed notice of rulemaking and hearing and bring an adoption notice to the Board in September. Seconded by Member Jeff Greenfield, the motion passed unanimously.

Proposal for Revised Contested Case Process

Ms. Pizzini presented an outline for a proposed process for conducting future contested case hearings. As proposed, the Board would sit as the Hearings Examiner with outside legal counsel engaged to legally advise and assist the Board with legal determinations through the contested case process. Ms. Pizzini would continue to represent the retirement system (advocate for TRS staff determinations that give rise to a contested case). Ms. Pizzini explained that she sought advice from other state legal resources about the proposed process and discovered that other state boards use a substantially similar process rather than engaging an individual hearing examiner to hear a contested case.

MOTION/VOTE: Member Darrell Layman moved that the TRS Board adopt the revised contested case process. Seconded by Member Scott Dubbs, the motion passed unanimously.

Case Updates

Ms. Pizzini updated the Board on the procedural status of the Mavencamp matter, which has been taken to district court on a petition for judicial review, and on the status of Ennis/Walsh investigation, which is nearing an end. TRS staff anticipates having a preliminary staff determination ready for communication to the school district and Mr. Walsh within the month.

Ms. Pizzini updated the Board on the status of her request for an Attorney General opinion related to the Montana Watchdog request for the member/employer names and benefit amounts of the 10 highest annual benefits paid by TRS as reported to the SAVA Committee. She understands the draft opinion has been written, and is currently being reviewed by the AG prior to circulation for comment, and that the draft opinion will hold that a retiree's expectation of privacy in the amount of his/her retirement benefit does not exceed the public right to know. She will review the draft opinion when received, and provide any necessary additional argument of our members' rights of privacy.

RETIREMENT REPORT

Service Retirements and Survivor Benefits

The Board reviewed the list of members who had recently retired.

CLOSED MEETING

DISABILITY APPLICATIONS

Executive Session to Discuss Disability Applications & Annual Reviews

Chairperson Peiffer directed the meeting to be closed at 2:41 p.m. to discuss and review disability applications since a member's right to privacy pertaining to their application for disability benefits clearly exceeds the merits of public disclosure.

OPEN MEETING

Chairperson Peiffer reopened the meeting to the public at 2:49 p.m.

Approval of Applications for Disability Retirement Benefits

MOTION/VOTE: Member Jeff Greenfield moved that the TRS Board approve discontinuing the annual disability review of Kelly F. Klein, Johnanna Yarlott, Marti O. Johnson, and Andrea M. Shannon. Seconded by Member Robert Pancich, the motion passed unanimously.

MOTION/VOTE: Member Darrell Layman moved that the TRS Board approve the disability request for Julie A Warnock. Seconded by Member Scott Dubbs, the motion passed unanimously.

MOTION/VOTE: Member Scott Dubbs moved that the TRS Board approve the disability request for Patricia M. Vielleux. Seconded by Member Darrell Layman, the motion passed unanimously.

MOTION/VOTE: Member Darrell Layman moved that the TRS Board approve the disability request for Gail E. King-Schlosser. Seconded by Member Robert Pancich, the motion passed unanimously.

BOARD TRAINING – JIM KERINS

Performance Appraisal Process

Mr. Jim Kerins presented an overview of the current system and statutory requirements, reviewed recent experiences, and identified options for changes should the Board want to pursue other alternatives. Mr. Kerins also discussed the 2010-11 performance appraisal form that the Personnel Committee put together for the Executive Director's position.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:58 p.m.

Chairperson _____

Executive Director _____