

**Teachers' Retirement Board Meeting
TRS Conference Room – Conference Call
1500 Sixth Avenue
Helena, Montana
November 18, 2011**

BOARD MEMBERS PRESENT

Kari Peiffer, Chair
Scott Dubbs
Darrell Layman
Jeff Greenfield
Robert Pancich
James Turcotte

STAFF PRESENT

David Senn, Executive Director
Tammy Rau, Deputy Executive Director
Denise Pizzini, Legal Counsel
Dan Gaughan, Accounting Supervisor
William Harmon, Communications Manager
Karla Scharf, Retired Payroll Supervisor
Johnelle Sedlock, Benefits Officer
Kristin Williams, Benefits Officer

OTHERS PRESENT

Phil Drake, Montana Watchdog
Diane Fladmo, MEA-MFT
Scott Svee, Jackson, Murdo & Grant, P.C.

CALL TO ORDER

Ms. Kari Peiffer called the meeting to order at 8:32 am, in the Teachers' Retirement System Conference Room, 1500 East 6th Avenue, Helena, Montana.

Adopt Agenda

Ms. Peiffer asked for additions or changes to the Agenda for November 18, 2011. Finding none, Ms. Peiffer requested a motion to adopt the Agenda.

MOTION/VOTE: Mr. Darrell Layman moved that the TRS Board adopt the Agenda for November 18, 2011. Seconded by Mr. James Turcotte, the motion passed 6-0. There was no public comment.

Approval of Minutes

Ms. Peiffer called for changes to the September 29 and 30, 2011 Board Meeting Minutes. Finding none, Ms. Peiffer requested a motion to adopt the September 29 and 30, 2011 Board Minutes.

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MOTION/VOTE: Mr. Jeff Greenfield moved that the TRS Board adopt the September 29 and 30, 2011 Board Meeting Minutes. Seconded by Mr. Layman, the motion passed 6-0. There was no public comment.

Public Comment on Board Related Items

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

CLOSED MEETING

DISABILITY APPLICATIONS

Executive Session to Discuss Disability Applications

Ms. Peiffer directed the meeting to be closed at 8:37 am to discuss and review disability applications since the individual's right to privacy pertaining to their application for disability benefits clearly exceeds the merits of public disclosure.

OPEN MEETING

Ms. Peiffer reopened the meeting to the public at 9:16 am.

Applications for Disability Retirement Benefits

MOTION/VOTE:

Mr. Layman moved to approve disability retirement request for Mr. Robert Allen. Mr. Turcotte seconded, motion passed 6-0.

Mr. Greenfield moved to approve disability retirement request for Ms. Sandra Boehmler. Mr. Robert Pancich seconded, motion passed 6-0.

Mr. Scott Dubbs moved to approve disability retirement request for Mr. Terry Grant. Mr. Greenfield seconded, motion passed 6-0.

Mr. Pancich moved to approve disability retirement request for Ms. Debra Miller. Mr. Layman seconded, motion passed 6-0.

Mr. Dubbs moved to table the disability retirement request until the February Board meeting, pending a second opinion from an oncologist and pay the early retirement for Ms. Christine Fisher. Mr. Layman seconded, motion passed 6-0.

INDIVIDUAL PETITIONS

Brian Adams – Purchase of Service

Mr. Adams was present to address the Board. Mr. Adams stated that he received a payment schedule for the actuarial cost to purchase two years of out of state teaching service in February 2011. When Mr. Adams inquired in September 2011 the amount quoted nearly doubled. He also stated he was not notified of this change when he inquired of the cost in February, nor did he receive the May 2011 newsletter. He is requesting to pay the original amount quoted in February 2011.

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Mr. Senn explained the cost increase resulted from changes recommended by the System's actuary and adopted by the Board at the September 2010 meeting. Since Mr. Adams did not receive adequate notice of the changes to the calculation, staff recommended that he be given 30 days to initiate a service purchase agreement to purchase the additional service based on the previous actuarial cost formula.

Staff also recommended that all similarly situated members be offered the same 30 day option to purchase service under the old formula. Similarly situated members are those members who requested service purchase estimates after the adoption of the new cost factors but before the effective date of the new cost factors (July 1, 2011), were given cost estimates based on the then current factors but were not informed that new cost factors would go into effect as of July 1, 2011, and for whom the old cost factors result in a lower service purchase cost. A list of these members was included in the board packet.

MOTION/VOTE:

Mr. Layman moved to adopt staff's recommendation and allow Mr. Brian Adams 30 days to initiate a service purchase agreement to purchase the additional service based on the previous actuarial cost formula, and that other members with similar circumstances be given 30 days to initiate a service purchase agreement using the previous formula. Mr. Greenfield seconded, motion passed 6-0. There was no public comment.

Sharon S Hays – Retirement Effective Date

Ms. Hays addressed the Board via teleconference. Ms. Hays asked the Board to approve her request for retirement benefits retroactive to July 1, 2010. Ms. Hays asserted that she is entitled to receive retirement benefits retroactive to July 1, 2010, because her contract with Helena Flats Elementary School was not renewed after June 2010, and she had effectively terminated TRS-reportable employment at the end of that school year. Ms. Hays had been informed by TRS staff at that time that she could apply for an early retirement benefit at any time, or wait until she qualified for full retirement benefits at age 60. Ms. Hays' complete application for retirement benefits was submitted to TRS on October 12, 2011. While processing Ms. Hays' application for retirement benefits, TRS staff became aware that Ms. Hays had been employed in a TRS reportable position in October 2011, so was not eligible to retire with an effective date of retirement earlier than November 1, 2011, and was not eligible for benefits retroactive to July 1, 2010. Written notice of the final staff determination regarding date of eligibility for retirement benefits was sent to Ms. Hays by Mr. Senn.

In her petition to the Board, Ms. Hays stated she was unaware working as a substitute teacher would affect her retirement eligibility, and that she had not filed for retirement benefits earlier because she was receiving unemployment benefits after her contract was not renewed, and because she had thought she would wait until age 60 to apply for the larger retirement benefit. Staff recommended denial of Ms. Hays' petition for retroactive benefits.

MOTION/VOTE:

Mr. Greenfield moved to deny Ms. Sharon Hays petition to receive benefits retroactive to July 1, 2010. Mr. Pancich seconded, motion passed 6-0.

LEGAL COUNSEL'S REPORT

Summary of Legal Issues

Ms. Pizzini addressed the Board on the Attorney General's Opinion in regards to Public Right to Know and TRS Retiree Benefit Amounts. At the September 2011, Board meeting the Board tabled making a decision on releasing the benefit amount retirees are currently receiving, and instructed staff to send a letter to all retirees notifying them of the Attorney General's decision and to have further discussion with Montana Watchdog regarding their objectives and what information they really need. Ms. Pizzini reported that notice had been sent to all TRS retirees and noted that very few retirees responded, though the responses received were generally opposed to TRS disclosing the requested information. Ms. Pizzini also reported that, on November 16, 2011, staff of TRS and MPERA met with Mr. Carl Graham and Mr. Phil Drake of Montana Watchdog, who made the request, and, subject to Board approval, agreed to provide four items of information that would better document the amount taxpayers paid to fund retirees' benefits to Montana Watchdog in lieu of the benefit amount: 1) name of retired member, 2) years of service, 3) employer name and 4) estimated aggregate employer and state contributions made to the retirement system while the retiree was employed in a position covered under TRS.

MOTION/VOTE:

Mr. Dubbs moved to authorize TRS staff to provide Montana Watchdog with a file of the four data elements agreed upon in their meeting with staff, and to instruct legal counsel to seek judicial review of the AG's opinion if a future request for disclosure of benefit amounts is received. Mr. Layman seconded.

Mr. Turcotte voiced concern that not all parties act out of the best interests of TRS retirees; therefore, he is not comfortable releasing this information. Mr. Layman asked, by releasing this information could we undermine our request for a judicial review. Attorney Scott Svee, speaking on behalf of an unidentified TRS retired member, also commented that he was concerned that providing any information now in response to the information request would "water down" a future appeal of the AG's opinion. Ms. Pizzini responded that the Attorney General's decision was specific to disclosure of the amount of a retiree's retirement benefits, and the compromise is to provide information identifying the amount of public contributions made to the retirement system on behalf of the retiree, which would certainly be determined to be public information under existing case law. Because TRS would not be providing the specific information (benefit amount) that was the subject of the AG's opinion, it should not be precluded in the future, on the basis that TRS had previously publicly disclosed such information, from contesting the AG's opinion by arguing that a retirement benefit amount is private information of a retiree. Mr. Svee concurred that the information proposed to be provided under the agreement with Montana Watchdog appears to be public information, but indicated there may still be benefit in requesting judicial review of the AG's opinion right now. Member Dubbs commented that he understands and agrees with the concerns around publicly disclosing information pertaining to TRS members and retirees, but believes an agreement to provide other information that meets Montana Watchdog's needs may be prudent as judicial review of the AG's opinion is not certain to result in a determination favorable to TRS members.

VOTE:

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Motion passed 5-1, Mr. Turcotte voted nay. TRS staff was instructed to notify TRS retirees of the decision to disclose information.

Summary of Legal Issues

Ms. Pizzini updated the Board on current legal issues. She indicated that we have still not received the Court's determination on the petition for judicial review of the Mavencamp matter. Ms. Pizzini indicated that she would not be providing status updates on the Douglas Walsh/Ennis Schools contested case due to the prohibition on ex parte communications, but that the Board should request updates from their contract counsel, Curt Drake, if they have questions regarding the case.

Ms. Pizzini also reported on a variety of foundations and other entities authorized under Montana's public education laws or affiliated with TRS employers. When these entities employ TRS retirees, often as independent contractors, it raises several questions. Are or should those entities be "employers" for TRS purposes? Are the retirees genuinely independent contractors or are they employees? The range of these questions and issues has expanded based on the increased volume of information being provided to TRS on working retirees following the 2011 legislative changes. Staff has already had some conversations regarding these issues with OPI, Department of Labor and Industry, representatives of school districts, and Education Coops. TRS staff needs to update the Board and obtain direction from the Board regarding an appropriate process for resolving the questions and issues. Ms. Pizzini indicated staff would work first with the members of the Legislation/Litigation committee to narrow the issues, and then bring specific issues/proposals to the Board for consideration.

EXECUTIVE DIRECTOR'S REPORT

TRS Funding Workplan

Mr. Senn directed the Board to handouts: a NASRA Briefing paper on hybrid retirement plans and the TRS pension plan long-term funding work plan.

2013 Legislative Concepts

Legislative concept planning will take place through mid-January 2012. Outlines of proposed legislative concepts will need to be submitted to the Governor's Budget Office in April 2012 and bill drafts are due September 2012.

Annual Per Diem Election Form

Mr. Senn advised the Board members that if they are receiving the \$50 per diem while serving as a Board member and their regular salary for an overlapping period, they must file a Multiple Public Employment Disclosure form with the Commissioner on Political Practices by December 15, 2011. If the public employee is on approved leave from other public employment, such as annual leave or compensation time, while performing TRS duties, they will not need to complete this form.

October 20 SAVA Committee Meeting

Mr. Senn reported that he and Ms. Roxanne Minnehan, Montana Public Employee Retirement, addressed the SAVA committee on October 20, 2011. Mr. Senn discussed the TRS Board's work plan for getting out their funding message and plans for the 2013 legislative session.

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Executive Summary

The Legislative Auditor's Office has completed their financial audit. Staff anticipates their only recommendation will be that the Board seeks funding to make the system actuarially sound.

OTHER BUSINESS

2012 Meeting Dates

The Board's policy Manual states that the Board shall meet at least four times a year. After some discussion, the Board agreed to meet on February 2, May 11, September 28, and December 7, 2012

MOTION/VOTE:

Mr. Turcotte moved to approve the Board meeting dates as discussed. Mr. Greenfield seconded, motion passed 6-0. There was no public comment.

Out of State Travel Requests

Mr. Senn requested he be authorized to attend the 2012 National Council on Teachers' Retirement Legislative Committee in Washington DC.

MOTION/VOTE:

Mr. Pancich moved that the TRS Board approve the out of state travel for Mr. David Senn. Seconded by Mr. Layman, the motion passed 6-0. There was no public comment.

Fiscal Year 2012 Budget Amendment

Mr. Dan Gaughan presented the budget amendment, which was reviewed by the Budget/Audit subcommittee. The proposed amendment included increases to "Personal Services" due to the Communications Manager position being changed from part-time to full-time, increases in costs in postage & mailing, travel, miscellaneous communications, and miscellaneous contracts, and a decrease in costs for printing and publications & graphics.

MOTION/VOTE:

Mr. Pancich moved to approve the budget amendment as presented including the change of the Communications Manager position to full-time from part-time. Mr. Turcotte seconded, motion passed 6-0. There was no public comment.

Financial Statements, Delinquent Agency, and Budget Reports

Mr. Gaughan reported that TRS staff again received the GFOA Award for their 2010 CAFR.

Mr. Gaughan pointed out changes to the real estate pool, fund balance, and investment revenue. Expenses are similar to last year.

Investment Report

Mr. Turcotte gave an investment update. He stated that the Board of Investments had a training session on Monday, November 14, at which Mr. South gave a presentation on funding the retirement systems. Mr. South stated the question was not what the investment assumption should be, but that if you are not receiving enough contributions to sustain the system, you will start spending the principle and other changes will need to take place to sustain the system. TRS cannot invest its way out of the hole.

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Returns for the first quarter were poor; the numbers at the end of October erased all gains thus far this year.

Mr. Turcotte advised the Board that Carroll South, Executive Director, BOI, is retiring at the end of the year. Mr. David Ewer was named as his replacement.

Draft Policy on Privacy and Security of Personal Information

Mr. Senn presented a draft policy on Privacy and Security of Personal Information for review and discussion. Any questions/suggestions regarding the policy should be forwarded to TRS staff for incorporation in the final draft to be presented for Board action at the February Board meeting.

Personnel Committee Report

The Personnel Committee met with Mr. Senn for his performance evaluation on Thursday, November 17, 2011. Mr. Senn's scores were mostly in the "exceeds expectations" range, with the scores from the Board members and staff averaging 4.5+ on a 1-5 scale. Only six members of staff completed an evaluation form.

APPLICATIONS AND BENEFIT ADJUSTMENTS

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

ADJOURNMENT

MOTION/VOTE: Mr. Layman moved to adjourn the meeting. Seconded by Mr. Greenfield, the motion passed 6-0.

There being no further business, the meeting was adjourned at 12:31 pm. The next meeting is scheduled Thursday, February 2, 2012.

Chairperson _____

Executive Director _____