



## 2017 LEGISLATIVE UPDATE

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### TRS BOARD LEGISLATION

#### [HB 67](#)

Sponsor: Representative Marilyn Ryan (D) HD 99  
Title: Generally Revise Teachers' Retirement System  
Effective: July 1, 2017  
Current Status: Signed into law by Governor Bullock

This bill provides clarification of existing law regarding administration of TRS. The affected sections of code are listed below:

#### Section 1 amends §19-20-101. **Definitions.**

- Adds “alternate payee” within the definition of Beneficiary. This provision now states that a member, retiree, or alternate payee may designate a beneficiary to receive a retirement allowance or payment upon their death. (Note: The Family Law Order must specify that the alternate payee may name a beneficiary.)
- Defines “Extra duty service” as service in an educational services capacity that is not compensated as part of the normally assigned duties and functions of a school district teacher, administrator, or other employee but is regularly assigned to one or more school district teachers, administrators, or other employees as part of the regular operation of the school district’s curricular and extracurricular programs.
  - See Section 3 below for related amendments to §19-20-401.

#### Section 2 amends §19-20-305. **Alternate payees – family law orders.**

- Clarifies the meaning of “family law order” and updates the list of information that the Family Law Order (FLO) must contain to identify the alternate payee, including current phone number. Also specifies that a copy of the alternate payee’s birth certificate must be submitted with the FLO.

#### Section 3 amends §19-20-401. **Creditable service.**

- Consolidates creditable service info by moving §19-20-204, Board’s Policy Governing Creditable Service, to this section.
- Clarifies how creditable service and earned compensation credit is calculated and awarded for “extra duty service” provided by TRS members.

- Key points:
  - If the member is hourly and is paid hourly, the employer simply reports the actual hours worked and the actual salary paid.
  - If the member is paid a single fee or stipend, the employer simply reports the actual stipend amount. TRS staff convert this to days of creditable service based on the daily rate of pay for an entry-level teacher for that specific district.

$$\text{Stipend amount} \div \text{daily rate of pay} = \text{days of service credit}$$

Section 4 amends §19-20-403. **Creditable service for employment while on leave.**

- Clarifies that “in-service leave” is available to be purchased through a service purchase agreement. Example: Maternity leave or other FMLA-approved leave of absence where the employee remains job attached. This does not change current TRS practice.

Section 5 amends §19-20-805. **Calculation of average final compensation.**

- Eliminates fringe benefits converted to cash as an exception to earned compensation.
  - Employers do not consistently report converted fringe benefits. Currently, if an employer converts fringe benefits to cash, it is not included as earned compensation for calculating AFC until it has been reported for at least five consecutive years. If a member retires before that time, any converted benefits reported in the three years that are used to calculate AFC are used as termination pay Option 2, the same as excess earnings.
  - Because the 10% cap on earnings sufficiently protects the system from adverse effects of salary increases, all reported compensation above the 10% cap now will be included as termination pay Option 2.

Section 6 amends §19-20-905. **Cancellation of allowance and restoration of membership.**

- Uses an earnings limitation as the trigger for a disability retiree’s reinstatement to active member status, consistent with other working retirees. Currently, the law prohibits a disabled retiree from accepting full-time employment in a TRS-reportable position. Now, full-time employment will be allowed; only the earnings limitation will return a disabled member to active status.

Section 7 amends §19-20-1002. **Payments upon death of retiree.**

- Provides for the lump-sum distribution of benefits that remain payable under a 10-year or 20-year term certain benefit when there is no surviving beneficiary. TRS will determine the present actuarial value of the remaining benefits payable and make a lump-sum payment to the last surviving beneficiary’s estate or, if the estate is not probated, to the last surviving beneficiary’s next of kin according to the hierarchy in 19-20-717, MCA.

Section 8 repeals §19-20-204, which Section 3 has incorporated into 19-20-401, and Section 9 provides a July 1, 2017 effective date.

## TRS BOARD LEGISLATION - CONTINUED

### [HB 68](#)

Sponsor: Representative Marilyn Ryan (D) HD 99  
Title: Revise University System Retirement Plan Participation Requirements  
Effective: July 1, 2017  
Current Status: Signed into law by Governor Bullock

This bill amends §19-20-204 to clarify the retirement plan choices available to an individual hired by the Montana University System or the Office of the Commissioner of Higher Education. Beginning July 1, 2017, an individual who is an active, inactive, or retired member of both TRS and PERS may only elect to remain an active member of TRS or PERS if the position they are hired into is reportable to that system.

## OTHER LEGISLATION NOT REQUESTED BY TRS

### [SB 115](#)

Sponsor: Senator Mary Moe (D) SD 12  
Title: Revising Stipends for National Board Certified Teachers  
Effective: July 1, 2017  
Current Status: Signed into law by Governor Bullock

This bill amends the definition of “earned compensation” in §19-20-101 to stipulate that stipends paid for national board certification pursuant to §20-4-134, MCA are not reportable to TRS as earned compensation.

### [SB 121](#)

Sponsor: Senator Edward Buttrey (R) SD 11  
Title: Provide that Volunteer Positions are not Reportable to TRS  
Effective: July 1, 2017  
Current Status: Signed into law by Governor Bullock

This bill amended §19-20-302 **Active Membership**. The definition now clarifies that any person in a *bona fide volunteer position* is not an active member of TRS. It also provides some restrictions that help protect the retirement system. This change is effective July 1, 2017.

The definition of *bona fide volunteer position* is summarized below:

- The individual in the position must receive no salary, stipend, remuneration of any kind, reimbursement of expenses, or in-kind benefits or services. Employer payments for insurance coverage required for the position (e.g., workers’ compensation, liability insurance) do not constitute remuneration.

- The position was not a paid position within the prior 12 months and does not become a paid position for at least 12 months following its designation as a volunteer position.
- The employer does not pay any individual in the same position while the position is designated as a volunteer position. In other words, the employer may create a new volunteer position, but may not simply reclassify a paid position as volunteer.
- The individual in the volunteer position may not work more than:
  - 4 hours per day, 12 hours per week, and 312 hours in a fiscal year if service is performed during the employer's regular business days; or
  - 312 hours in a fiscal year if service is performed primarily outside of the employer's regular business days.

The law allows TRS to require the employer to verify that a volunteer position meets these criteria.

**For retirees:** As long as the position qualifies as a bona fide volunteer position, **no** 150-day break in service is required.

Examples:

- A. A July 1, 2017 TRS retiree wants to serve as an assistant football coach starting in August. As long as the school creates a bona fide volunteer position, the retiree may fulfill that role.
- B. A TRS member retires from teaching but wants to stay involved in education. The retiree may serve in a bona fide volunteer role with a TRS employer, such as reading to kids a couple hours per day or tutoring students in the library after school, without a 150-day break in service.
- C. An active TRS member, such as a part-time teacher, offers to help coach members of the track and field team on a volunteer basis. The teacher may perform these duties without additional contributions to TRS and without earning additional service credit, as long as the volunteer position meets the criteria set forth in statute.
- D. A small high school does not currently have a speech and debate team and wants to start one. An experienced member of the community offers to assist the faculty as a volunteer coach. As long as the volunteer position meets the criteria set forth in statute, the individual is not considered an active TRS member.

Please call TRS at (866) 600-4045 if you have any questions about how these bills affect TRS members, benefit recipients or employers.