



2023 Legislative Update

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TRS Board Legislation

[HB 117](#)

Generally Revise Working Retiree Laws Under TRS

Sponsor:	Representative Marta Bertoglio (R) HD 75
Effective:	July 1, 2023 or January 1, 2024 as described below
Status:	Passed Legislature and signed by Governor Gianforte
TRS Position:	Proponent

HB 117, which was introduced at the request of the Teacher's Retirement Board with support from stakeholder groups, provides greater flexibility for TRS employers to fill vacant positions with retired members by increasing the allowable earnings limitation from 1/3 to 49% and by reducing the break-in-service requirement from 150 to 120 calendar days. It also reinserts Superintendent as a position eligible to return to work under the existing "emergency hire" provision.

Each provision in HB 117 carries a delayed effective date, as noted below.

Working retiree provisions in §19-20-731, MCA are amended as follows:

- **Effective July 1, 2023:** The annual earnings limitation for working retirees will increase from one-third to 49% of their average final compensation (AFC) or 49% of the median AFC for all members who retired in the previous year, whichever is higher.

Working retiree provisions in §19-20-734, MCA are amended as follows:

- **Effective January 1, 2024:** A TRS member who terminates employment on or after that date and retires may return to TRS-reportable employment after a 120-calendar-day break in service. (Any member whose termination date and/or retirement date is *prior to* January 1, 2024 remains subject to the existing 150-calendar-day break in service requirement.)

"Emergency hire" provisions in §19-20-732, MCA are amended as follows:

- **Effective July 1, 2023,** Superintendent is reinstated as an administrator position eligible for reemployment with no limit on earnings and no loss of retirement benefits, provided all other requirements are met.

While employing retired TRS members is not viewed as a long-term solution to the teacher shortage, HB 117 should provide some short-term relief for TRS employers. TRS's actuarial consultants do not believe these changes will have a measurable impact on the funded status of the system; however, the bill provides a sunset date of June 30, 2027 requiring the TRS Board and Legislature to reevaluate these provisions during the 2027 Legislative session and determine whether member behavior has been affected in a way that harms the system.

[HB 135](#)

Revise Administrative Provisions of TRS

Sponsor:	Representative Marta Bertoglio (R) HD 75
Effective:	Various effective dates as described below
Status:	Passed Legislature and signed by Governor Gianforte
TRS Position:	Proponent

This TRS “housekeeping bill” was introduced at the request of the Teachers’ Retirement Board to provide a process for TRS employers to establish Independent Contractor status and to clarify and provide technical fixes in several other sections of statute. Below is a summary of changes enacted by HB 135 and their effective dates.

Establishing Independent Contractor status • §19-20-307, MCA

- This new section of TRS law provides a more stringent process for TRS employers to establish that an individual is an independent contractor. The employer must report the individual to TRS as an active member or working retiree, as appropriate, until independent contractor (IC) status is conclusively established for that specific individual and position. TRS will accept IRS form SS-8, a court order, or a written determination prepared by a qualified individual (such as an attorney or employment professional) that comprehensively describes how IRS criteria were applied in making the determination. **This change has a delayed effective date of July 1, 2024.**

Direct Transfers from TRS to PERS • §19-20-409, MCA

- The bill clarifies that a member who requests a direct transfer from PERS to TRS will receive the same service credit with TRS as they had with PERS. Reciprocating language was included in the PERS housekeeping bill, eliminating the need for conversion of PERS service to TRS and vice versa.
- The bill also clarifies that, after the death of an active TRS member who had service credit on account with PERS, the member’s beneficiary is responsible for requesting a transfer of that service credit to TRS if the additional service credit would result in vesting of a death benefit.
- **These changes have a delayed effective date of July 1, 2024.**

Redeposit of Contributions Previously Withdrawn from PERS • §19-20-427, MCA

- Clarify that the interest rate charged on a transfer of previously withdrawn service and contributions from PERS to TRS is the actuarially assumed interest rate in effect on the date the application is signed. Reciprocating language was included in the PERS housekeeping bill. **This change has a delayed effective date of July 1, 2024.**

Clean up Guaranteed Annual Benefit Adjustment (GABA) Language • §19-20-719, MCA

- This change cleans up language that was challenged and found to be unconstitutional following the 2013 legislative session. It clarifies that the minimum GABA increase is 1.5% for Tier 1 members and 0.5% for Tier 2 members. TRS has never paid less than these minimum GABA amounts for eligible Tier 1 and Tier 2 members, and **the effective date of this provision is retroactive to July 1, 2013.**

TRS has statutory authority to require payroll records • §19-20-208, MCA

- This section of statute is clarified to state that TRS has the authority to require that TRS employers provide payroll, personal service, and other records for all employees, independent contractors, or employees of a third party to aid in the completion of TRS participation audits. (Effective July 1, 2023)

Purchase of first 30 days or 210 hours of service • §19-20-417, MCA

- This provision clarifies that an individual may purchase the first 30 days or 210 hours of service only if that service was provided in the same fiscal year in which the individual first became an active member. The member must pay both the employer and employee contributions for the first 210 hours, plus interest at the actuarially assumed rate. (Effective July 1, 2023)

Earned Compensation and 110% Cap on Earnings • §19-20-715, §19-20-805, and §19-20-1001, MCA

- Existing language describing the 110% cap on earnings is removed from "Earned Compensation – Limitations" (19-20-715) and inserted in "Calculation of Average Final Compensation" (19-20-805), with a corresponding change to an internal reference in 19-20-1001. This change should help members understand how the cap could affect their AFC calculation if their earnings increase more than 10% from one AFC year to the next. (Effective July 1, 2023)

Use of "Physician" in TRS Disability Statutes • §19-20-901 and §19-20-903, MCA

- In compliance with an HB 495 Task Force objective regarding the types of medical professionals included in the term "Physician," TRS has revised language to clarify that the TRS Board will decide which health care providers and related professionals are qualified to conduct medical examinations to assist the board in making disability retirement determinations. (Effective July 1, 2023)

Statutory Renunciation of Multiple \$500 Death Benefit Beneficiaries • §19-20-1002, MCA

- This section of the bill provides for a statutory time limit for payment of the \$500 death benefit when there are multiple beneficiaries and one or more of the beneficiaries cannot be located or fails to respond to TRS mailings about the death benefit. Once the statutory time limit has been reached, TRS will pay the \$500 death benefit in equal shares to the beneficiaries who responded. (Effective July 1, 2023)

SB 25

Increase University System Supplemental Contribution to TRS

Sponsor: Senator Ryan Lynch (D) SD 37

Effective:

Status: *Failed to Pass Legislature*

TRS Position: Proponent

SB 25 was introduced at the request of the Teachers' Retirement Board.

Background: In 1987, the Montana University System established an optional Defined Contribution retirement plan for faculty and administrators. In 1993, that plan, now called MUS-RP, was made mandatory and TRS was closed to all new hires, creating an unfunded liability for the University System's existing TRS members. To cover their share of the liability, each MUS employer was required to make supplemental contributions to TRS, calculated as a percentage of the earned compensation of all MUS employees who participate in the MUS-RP. (Employees who participate in the MUS-RP do not contribute to TRS.)

§19-20-621, MCA requires that MUS employers continue to make supplemental contributions at a rate sufficient to amortize the unfunded liability of their TRS members by July 1, 2033. The current rate of 4.72% was set by the 2007 Legislature. The TRS Board also must periodically review the supplemental contribution rate and recommend adjustments to the Legislature as needed. However, because no Legislature since 2007 has acted on the TRS Board's recommendations, a supplemental employer contribution rate of 13.53% now would be required to amortize the University System's unfunded liability by 2033.

Other Legislation Not Requested by TRS

SB 18	Add Benefit Policy Statement to Pension Systems
Sponsor:	Senator Mike Cuffe (R) SD 1
Effective:	Upon passage
Status:	Passed Legislature and Became Law
TRS Position:	Proponent

This bill adds a benefit policy statement to each pension system preventing the addition of new benefits unless the system amortizes in 30 years or less and the additional benefit is projected to be fully funded in perpetuity. TRS supported this legislation, which essentially mirrors the TRS Board's existing Funding and Benefits Policy.

SJ 4	Conduct an Interim Study of PERS and TRS
Sponsor:	Senator Wendy McKamey (R) SD 12
Effective:	Interim Study
Status:	Passed Legislature and Became Law
TRS Position:	Proponent

This Joint Resolution of the Senate and House requests another interim study of TRS and the PERS defined benefit plan to develop recommendations for a long-term strategic approach to funding. TRS supported this resolution as an opportunity for ongoing education about the defined benefit pensions and the potential consequences of changes the Legislature may consider in the future.

SB 348	Revise Pension Laws to Eliminate GABA for New Hires
Sponsor:	Senator Tom McGillvray (R) SD 23
Effective:	
Status:	<i>Failed to Pass Legislature</i>
TRS Position:	Informational

This legislation would have created a new tier of membership in TRS (Tier 3), eliminating the Guaranteed Annual Benefit Adjustment (GABA) for TRS members hired on or after July 1, 2023. TRS provided only informational testimony about the potential for a gradual reduction in long-term costs as Tier 3 entrants replaced retired Tier 1 and Tier 2 members.

Call TRS at (406) 444-3134 or (866) 600-4045 if you have any questions about this legislative summary.