

# Montana Teachers' Retirement System

P O BOX 200139  
1500 EAST 6TH AVE  
HELENA MT 59620-0139

## NEWSLETTER



### CONDITIONS FOR RE-EMPLOYMENT OF TRS RETIREES HOUSE BILL 363

October 2009

#### PHONE NUMBERS

MAIN LINE  
406-444-3134

TOLL FREE NUMBER  
1-866-600-4045

FAX NUMBER  
406-444-2641

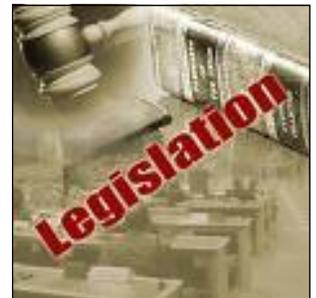
WEB ADDRESS  
[www.trs.mt.gov](http://www.trs.mt.gov)

**HOUSE BILL 363** - 2009 Legislative Session, sponsored by Representative Llew Jones, allows a Montana Teachers' Retirement System (TRS) retired member with 30 or more years of service to be re-employed as a teacher, specialist, or administrator on a full-time basis by a school district without the loss or interruption of their TRS retirement benefit. A retired member hired under this provision is exempt from the one-third earning's and part-time employment limits under §19-20-731, Montana Code Annotated (MCA) .

HB 363 applies only to school district employers as defined in §20-6-101 and §20-6-701, MCA, and does not include state agencies, counties, education cooperatives, the university system, community colleges, or any other employer participating in the TRS.

The intent behind HB 363, as explained by the Sponsor, is to help school districts fill positions when they can not find a qualified applicant, and to do so in such a way as to not have an adverse impact on the funding of the TRS. Therefore, before hiring a retired teacher, a school district must first certify to the TRS office that they advertised the position each school year but were unable to fill the position because the school district received no qualified applications or did not receive an acceptance of an offer of employment made to a non-retired teacher, specialist, or administrator. Advertisement of the position and certification of inability to fill the position must occur each school year prior to entering into a contract with a retired member, including re-contracting with the same retired member.

To be eligible for re-employment under HB 363 a retired member must have retired under the TRS with 30 or more years of creditable service. In addition, the TRS retired member must also have received at least two monthly retirement benefits. Monthly benefits are processed on the last business day of each month. For example, if a retiree terminated in June they would be considered a July retiree and would not be eligible to be re-employed under this provision until September 1, after they have received their July and August retirement benefits. (Continued on page 2)



#### INSIDE THIS ISSUE

Re-employment House Bill 363	2
Unfunded Liabilities House Bill 34	3
Compliance House Bill 34	4
Normal Retirement Age House Bill 59	5-6

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1992,  
ALTERNATIVE ACCESSIBLE FORMATS OF THIS DOCUMENT WILL BE PROVIDED  
UPON REQUEST

**CONDITIONS FOR RE-EMPLOYMENT OF TRS  
RETIREES  
HOUSE BILL 363**

**(Continued from page 1)**



The maximum number of years a TRS retired member may only be employed pursuant to HB 363 is three years during their lifetime. A year is defined to mean all or any part of a fiscal year (July 1 through June 30). Retired members re-employed under HB 363 will not receive any increase in their retirement benefit due to additional service time or salary received while working and drawing a retirement benefit.

HB 363 will sunset on July 1, 2015; therefore, a contract cannot be for a term extending beyond June 30, 2015. In addition, to help fund any adverse impact HB 363 may have on the TRS, school districts will be required to contribute to the TRS the sum of all employee and employer contribution rates (17.11% effective July 1, 2009) on the salaries paid to retired members working under HB 363. **Note:** this rate will be paid by the school district; retired members re-employed under HB 363 will not be required to contribute to the TRS.

Before a retired member is offered a contract for re-employment pursuant to HB 363, the TRS must certify that the retired member meets the minimum requirements under HB 363 to be reemployed and continue to receive their TRS retirement benefit. Two new forms are available from the TRS office for this purpose: "Employer Certification to Employ a Retired Member" form and the "Retired Member Application to Return to Work" form. Both forms, together with a copy of the proposed contract, must be received by the TRS office prior to signing a contract with the retired member. The TRS will advise both the employer and retired member within 10 days of receipt of the forms if the retired member is eligible to be re-employed under the terms of HB 363.

**TRS BOARD GUIDING PRINCIPLES**

To earn the respect and trust of our members, we adhere to the following values:

- High ethical standards
- Honesty, integrity, and impartiality
- Dignity, respect, and mutual support
- Service excellence

**TRS WEBSITE**

The TRS website is available at [www.trs.mt.gov](http://www.trs.mt.gov).  
The website contains many useful links for active, inactive, and retired members.

## UNFUNDED LIABILITIES HOUSE BILL 34



**HOUSE BILL 34** - 2009 Legislative Session, was introduced at the request of the TRS Retirement Board to help fund the TRS through additional contributions, reduce liabilities, and limit practices that increase unfunded liabilities.

**Additional Funding** - Starting in July 2013, employers re-employing a TRS retired member, pursuant to §19-20-731, MCA, in a part-time TRS position will be required to contribute to the TRS the full employer contribution rate (currently 9.85%) on all wages paid to the working retiree even if the working retiree is earning less than one-third of their average final compensation. This amendment will compensate for lost funding of the TRS when positions that would otherwise be filled by active TRS members are filled by working retirees and will provide approximately \$7 - \$8 hundred thousand in new funding each year to the TRS.

**Reduce Liabilities** - A TRS retired member returning to a full-time position after July 1, 2009, (except as provided in House Bill 363, see Pages 1 & 2) will have their benefit suspended until they terminate and re-tire again, at which time a second benefit will be calculated. This amendment will terminate the unfunded practice of recalculating the retirement benefit when a retired member returns to full-time employment and retires a second time. This change is expected to reduce unfunded liabilities by \$5 - \$7 million over the next several years.

If the TRS retired member returns to work on or after July 1, 2009, for at least three full years, a second benefit will be calculated based on the new service and salaries. This second benefit will be added to the first benefit to determine their new retirement benefit. At the time of the second retirement the member will not be allowed to change the retirement benefit allowance elected with the first retirement, or designate a new beneficiary unless the original beneficiary has died, and then the original benefit will be paid based on the option previously elected. If the member dies while in active status, the beneficiary designated at the time of their initial retirement will be entitled to a benefit pursuant to the original retirement benefit allowance elected, plus any additional benefits earned at the time of their death.

If the member does not complete three full years, the employee contributions reported to the TRS, plus interest, will be returned to them, or to their designated beneficiary should the member die while in active service.

**Unfunded Practice** - HB 34 will also stop the practice of terminating a few days before the end of the school year so the retiree can receive one additional monthly benefit. If a member terminates their employment within 30 days of the last day of school, the retirement benefit will be effective on the first of the month following the last pupil-instruction or pupil-instruction-related day in the school year, instead of the first day of the month following termination.

## TRS BOARD MISSION STATEMENT

To promote long-term financial security for our membership  
while maintaining the stability of the fund.

## COMPLIANCE WITH PENSION PROTECTION ACT AND INTERNAL REVENUE SERVICE REGULATIONS



**HOUSE BILL 59** - 2009 Legislative Session, was a housekeeping, general revision bill, making administrative changes to the TRS laws. Many of the amendments were necessary to comply with the Pension Protection Act (PPA) of 2006, and/or are required to comply with the Internal Revenue Service's (IRS) regulations governing qualified plans.

Some of the more significant changes include:

- ◆ **Full-time service** – Amendments clarify that an alternative school calendar (i.e., 4-day weeks) of less than 180 days, which meets accreditation standards for a full-time school year, would also qualify as full-time service under the TRS. This amendment was made retroactive to July 1, 2005, to cover past school calendars that may have included less than 180 days.
- ◆ **Normal Retirement Age** – Amendment changed the definition of “normal retirement age” under the TRS to mean at least age 55 and eligible for an unreduced retirement benefit. (See article on Normal Retirement Age and Certification Regarding Re-employment for additional information, pages 5 & 6).
- ◆ **TRS membership** - Membership eligibility was amended to clarify that professionally qualified persons such as counselors, curriculum specialists, artists, musicians, and others with special training who are qualified to appraise pupils' special competencies must be TRS members. The amendment also added to the list of positions required to participate in the TRS the positions of Dean of students, administrative officers and instructional staff of a community college; a person employed in a teaching or educational services position with an education cooperative, and anyone reported on the school district's Annual Data Collection Report to the Office of Public Instruction (OPI) and employed in a non-clerical position.
- ◆ **Roll Over Options** - TRS members electing to withdraw their account will now have the option to roll over the payment to a ROTH IRA.
- ◆ **Members called to active military service** - The Heroes Earnings Assistance & Relief Act (HEART), requires qualified pension plans to pay a survivor benefit that would normally be payable to the designated beneficiary if the death occurred while a TRS member was performing qualified military service. Under the HEART amendments approved by the 2009 Legislature, a designated beneficiary would be entitled to any survivor benefit that the system would provide as if the member had resumed employment and then died. Therefore, if a member with at least five years of creditable service (vested) dies while on active duty, their designated beneficiary will be entitled to a monthly TRS survivor benefit.

Many of the changes proposed in HB 59 were required to comply with the IRS regulations governing qualified plans. Failure to comply with the IRS's requirements could result in the TRS losing its status as a qualified plan. Loss of status as a qualified plan would mean that the plan and contributing employers and employees would lose the favorable tax treatments applicable to contributions and benefits from a qualified plan, including but not limited to pretax treatment of contributions.

**“NORMAL RETIREMENT AGE” PURSUANT TO  
FEDERAL REGULATIONS AND TRS STATUTE  
HOUSE BILL 59**



Pursuant to federal regulations [Treas. Reg. 1.401-1(a)(2)(i)] and TRS statute, §19-20-731, MCA, if a member has not attained “normal retirement age” and is re-employed with the same employer within 30 days from the member's effective date of retirement, **or** if the member has not attained “normal retirement age” and has a pre-arranged agreement for re-employment with the same employer in ANY CAPACITY, the member must be considered to have continued in the status of an active member and not to have separated from service and is, therefore, ineligible for a retirement benefit. The IRS will treat a return to work even in a part-time Public Employee Retirement System (PERS) or TRS position the same as a return to full-time employment.

“Normal Retirement Age” is defined as at least age 55 AND eligible for an unreduced retirement benefit or, age 60 or greater with five or more years of creditable service. (TRS members are eligible for unreduced benefits at any age with creditable service in 25 years, but if less than age 55 then they would not be considered “Normal Retirement Age”.) For Example:

Age	Years of Service	Normal Retirement Age	Prearranged Agreement (Part-time PERS/TRS position)	1099-R 10% Early Distribution Penalty Tax if the member is less than 59 ½ (see page 6)	Eligible for a TRS Retirement Benefit
52	25.0	NO	NO	NO	YES
52	25.0	NO	YES	N/A	<b>NO</b>
55	25.0	YES	NO	NO	YES
55	25.0	YES	YES	<b>YES</b>	YES*
59	10.0	NO	NO	NO	YES
59	10.0	NO	YES	N/A	<b>NO</b>
60	5.0	YES	NO	NO	YES
60	5.0	YES	YES	NO	YES*

\* Member has a pre-arranged agreement with the same employer and is eligible for a TRS retirement benefit because the member has attained “normal retirement age”, is eligible for an unreduced TRS retirement benefit (i.e., no early retirement reduction factor applied), and meets the definition of a “retired member”. A “retired member” is defined as a TRS member who has terminated all positions eligible to participate in the TRS, and who has received at least one monthly retirement benefit. (Ref: §19-20-101, MCA.)

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## **“NORMAL RETIREMENT AGE” PURSUANT TO FEDERAL REGULATIONS AND TRS STATUTE**

### **HOUSE BILL 59 (continued)**



Pursuant to IRS regulations, if the member has not attained “normal retirement age”, there must be a bona fide separation from service before a retired member would be eligible to return to employment with the same employer. If there is not a bona fide separation from service, the member could be deemed ineligible for a retirement benefit, in which case, the benefit would be cancelled, or the benefit might be subject to an IRS 10% early distribution penalty tax if the member is less than age 59 ½.

If a retiring member does or does not have a pre-arranged agreement to return to work with the same employer the IRS restrictions have no impact on the calculation of the TRS retirement benefit, the member is still entitled to full benefits at any age with creditable service in 25 years or more. However, the regulations may impact a member’s eligibility to receive a benefit or the taxation of the benefits if there is a pre-arranged agreement to return to work for the same employer.

- ◆ If a retiring member has a pre-arranged agreement to return to work following their retirement with the member’s same employer, they must fully disclose, in writing, to the TRS the details of that agreement. A pre-arranged agreement to return to work in any capacity, even service reportable to PERS, could result in voiding or suspension of the retirement benefit and/or incurring significant tax penalties.
- ◆ The IRS can impose a significant tax penalty on your TRS benefits if you are under the age of 59 ½, retire, begin receiving a retirement benefit, and prior to termination you agreed to be re-employed by the employer from whom you retired. In order to avoid the penalty there must be a bona fide separation from service between you and your employer.
- ◆ All retirees have a duty now and in the future to disclose, in writing, to the TRS any employment in any capacity, including as an independent contractor with the member’s same employer or with any employer that participates in the TRS or if they have accepted employment through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor.

### **TRS WEBSITE**

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HELENA MT 59620-0139

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**2009 NEWSLETTER**