

Exhibit No. 2  
 Date 3-6-2013  
 Bill No. HB 54

**Testimony**  
**House Bill No. 54**  
**Introduced by Rep. Pat Ingraham**  
**By Request of the Teachers' Retirement System**

HB 54 is the housekeeping bill for the Teachers' Retirement System. The bill provides clarification of existing law regarding administration of TRS and makes changes required for ongoing compliance with tax qualification standards as announced by the Internal Revenue Service. While a number of statutory additions and amendments are proposed, they are mostly all directed at achieving the following:

1. To clarify and consolidate in one statutory section (new section 9 of HB 54) the requirements that must be met before a retired member may return to work and remain eligible to receive retirement benefits, including:
  - a. Clarification that a member must terminate employment before they are eligible to receive retirement benefits;
  - b. Clarification regarding when a member has attained and is in "retired member status," and would be eligible to work as a working retiree; and
  - c. Imposing more explicit certification requirements on members and employers regarding date of termination and whether there is a pre-arranged agreement to return to employment in a TRS eligible position.

In general, under both existing TRS law and IRS qualification standards, TRS is prohibited from making distribution of retirement benefits to members who have not actually retired, i.e., terminated employment in all TRS-reportable positions, or who have made arrangements to return to work for the same employer in a TRS-reportable position.

The following four amendments/additions (section 1 of HB 54) are relevant to this effort:

- **A definition of "date of termination" or "termination date" is added**, which means "the last date on which a member performed service in a position reportable to the retirement system." (See 19-20-101(7))
- **A definition of "position reportable to the retirement system" is added**, which means "a position in which an individual performs duties that would entitle the person to active membership in the retirement system under 19-20-302." (See 19-20-101(17))
- **Amends the definition of "termination" or "terminate"** to mean that the employment relationship between the member and employer has terminated (been fully and completely severed) as required by New Section 9. (See 19-20-101(24))
- **Amends the definition of "retired," "retired member," or "retiree"** to mean a person who is in retired member status as specified in new section 9. (See 19-20-101(19))

2. To clarify TRS statutory provisions as required to comply with IRS tax-qualification standards, including:

- a. To clarify that normal retirement age, as used in Title 19, chapter 20, is an actual age that is no less than 60 years of age; (See Section 1, 19-20-101(15))
    - The revised definition of "normal retirement age" to an actual age of 60 (up from age 55 in the current TRS statute) is also a requirement of the IRS. The definition does not impact member eligibility for retirement benefits except in situations where the member has not attained normal retirement age and has a pre-arranged agreement for post-retirement employment.
  - b. To make explicit that a vested member, upon attaining normal retirement age, has a nonforfeitable right to the benefits accrued and payable under the provisions of Title 19, chapter 20; (See Section 6, 19-20-801)
    - This is not a change in law; the nonforfeitable nature of benefits owed by TRS has always been implicit in TRS law. In the IRS's most recent qualification review cycle, the IRS has required that the nonforfeiture language be explicitly set forth in TRS statute.
  - c. To amend the catchall section of the definition of "employer" to use terminology consistent with the terms used by the IRS in referencing "political subdivisions," "agencies," and "instrumentalities," regarding the employer entities that are eligible to participate in a governmental pension plan (See Section 1, 19-20-101(9)).
    - The revised definition does not change what employer entities are eligible/required to participate in TRS, but makes the terms used by TRS and the IRS consistent.
3. To provide for jurisdiction and venue for judicial review of TRS administrative decision in the First Judicial District Court, Lewis and Clark County, unless otherwise stipulated by the parties. (See Section 2, 19-20-201)
    - Currently, general venue statutes allow TRS members requesting judicial review of administrative decisions to file their petitions in Lewis and Clark County or in the court district in which they reside. TRS staff believes the inconvenience to an individual member to be limited to filing a petition for judicial review in Lewis and Clark County is outweighed
    - by the cumulative cost to all TRS members in staff time necessary to appear in any District Court in the state.
      - Judicial review is generally limited to review of the administrative record, and the process would include, at most, oral argument of the issues for review.

There are other minor amendments in HB 54, which are primarily proposed for consistency with other applicable statutes, for readability, or for clarification.

**House Bill No. 54**  
**Introduced by Re. Pat Ingraham**  
**(Teachers' Retirement System's Housekeeping Bill)**

**SECTION SUMMARY**

**Section 1. Amendments to 19-20-101 – Definitions.**

(7) Adds definition of "**date of termination**" or "**termination date**," to mean "the last date on which a member performed service in a position reportable to the retirement system."

- The defined terms are used in New Section 9 and are key in clarifying when a member has terminated employment in all TRS-reportable positions and in determining when a member is eligible to receive retirement benefits.

(9) Amends the "catch-all" subsection of the definition of "**employer**" from "any other agency or subdivision of the state..." to "any other agency, political subdivision, or instrumentality of the state ..."

- The amendment does not expand the scope of affected entities but applies entity designations used by the IRS. The amended language will make the language used in statute to designate TRS-eligible employers consistent with the rules being promulgated by the IRS for definitions pertaining to governmental pension plans.

(15) Amends definition of "**normal retirement age**" to "an age not less than 60 years of age."

- This amendment is necessary to conform to IRS requirements, as prescribed in a qualification letter from the IRS indicating that TRS must define "normal retirement age" as an actual age not less than age 60.
- This change does not affect members' eligibility to receive retirement benefits under all eligibility criteria as set forth in TRS statutes.
- This change will apply to determinations regarding permissibility of pre-arranged agreements.

(17) Adds definition of "**position reportable to the retirement system**", to mean "a position in which an individual performs duties that would entitle the person to active membership in the retirement system under 19-20-302."

- The term is currently used in 19-20-731 to indicate positions held by working retirees who must be reported to TRS, but has not previously been defined. The term is now also to be used in place of "positions from which the member is eligible to retire" in part 8, as the intent and application of the language in part 8 has always been to require termination from all positions that are reportable to

TRS. Defining the term and using it consistently in all TRS statutes that identify TRS-reportable positions for any purpose will prevent confusion and enhance understanding of participation and reporting requirements.

(19) Amends definition of "**retired**," "**retired member**," or "**retiree**" to mean a person who is in retired member status as set forth in new section 9.

- This amendment does not change the threshold description of a "retired member," but places the definition in expanded statutory language that clarifies when a working retiree will no longer be in retired member status.

(24) Amends definition of "**termination**" or "**terminate**" to mean that the employment relationship between a member and employer has been terminated as required by new section 9.

- Again, the threshold definition has not been changed, but has been placed in expanded statutory language that clarifies when an employment relationship will be deemed to have been terminated (fully severed). This amendment is intended to comport with the developing body of IRS determinations and guidance regarding termination of employment and valid vs. "sham" retirements that are related to prohibitions against in-service distributions.

**Section 2. Amendments to 19-20-201 pertaining to administration of the retirement board to provide for jurisdiction and venue for judicial review of TRS administrative decisions are in the first judicial court, Lewis and Clark County.**

The amendment reduces expense and inconvenience for the retirement system by requiring petitions for judicial review of TRS administrative decisions be brought in Lewis and Clark County. While there may be some minor inconvenience to individual TRS members to present their claims in Lewis and Clark County rather than in the court jurisdiction in which they reside, the overall reduction of costs related to personnel time and travel accruing to all TRS beneficiaries outweighs the minor inconvenience to individual contestants. The added provision does allow TRS to stipulate to other venue/jurisdiction in appropriate circumstances.

**Section 3. Amendment to 19-20-409.**

Amends the term "creditable service" to "service credit," pertaining to transfer of service credit and contributions from PERS to TRS. "Service credit" is the defined term in the PERS statutes and is the appropriate term to use in this statute.

**Section 4. Amendment to 19-20-716 pertaining to termination pay.**

The amendment deletes a subsection that defines, for the purpose of this section, the "date of termination," as the new definition discussed above applies to this provision. Other changes are made only to improve readability and clarity.

**Section 5. Amendment to 19-20-733 pertaining to resumption of employment by retired members and suspension of benefits.**

Current subsection (4), pertaining to pre-arranged agreements, is deleted as the substance of the subsection is now contained in new section 9. A new subsection (4) is added to clarify a particular situation: If a retiree whose benefits were suspended because they have been rehired in a TRS covered position, and the member's joint annuitant dies before they become a retired member again, the member will have the option of electing either the normal form benefit (i.e., live only annuity) or making a new optional benefit election.

- Under current law, when a retiree's benefits are suspended because they have returned to active member status, upon their subsequent retirement they are required to maintain the same beneficiary and retirement option. This amendment will make an exception if their designated beneficiary has died.

**Section 6. Amendment to 19-20-801 pertaining to eligibility for service retirement to use the defined term "position reportable to the retirement system" as discussed in Section 1 (17) above.**

A new subsection (2) is added providing that a member who is vested and has attained normal retirement age has a nonforfeitable right to the benefits accrued and payable under the provisions of the chapter, subject to the right to withdraw.

- The nonforfeitability provision is not a substantive change to TRS law; the TRS statutes implicitly provide for nonforfeitability of benefits, as has long been an IRS qualification standard. However, in IRS' recent qualification review cycle, the IRS took the position that an explicit provision was required. This provision meets a qualification contingency applied to TRS by the IRS.

**Section 7. Amends 19-20-802 to expressly require that a member must terminate employment in all positions reportable to TRS to be eligible for early retirement.**

The requirement, which is an IRS qualification standard, has always been applied to early retirements, but the language was not expressly set forth in this provision.

**Section 8. Amendment to 19-20-805 is necessary to correct the statutory reference in subsection (4) .**

**New Section 9.** This new section brings together requirements previously contained in other provisions and provides clarification regarding: (a) the requirement for termination of employment for eligibility to receive retirement benefits, including the impact of pre-arranged agreements for post-retirement employment; (b) when a member has attained retired member status and is eligible for post-retirement employment pursuant to 19-20-731; (c) that a retired member who is returned to active member status for any reason is

no longer in a retired member status, but is now an active member; and (d) that a retiring member and his/her employer must certify a date of termination and whether there is a pre-arranged agreement.

- Other than a more specific requirement for certification of a date of termination, this section does not create new requirements. Rather, the new section is intended to provide a single, chronological description of the required "status" of members related to termination, retirement, and post-retirement employment. This section is to address and prevent any confusion regarding when a member is eligible to retire and when a retired member may return to post-retirement employment.

**Section 10. Amendment to 19-20-1101 regarding insurance premiums withheld from benefit payments.**

The amendments clarify that an employer, to whom TRS pays a portion of a member's retirement benefit to pay premiums on employer-provided health insurance, is obligated to verify authorized deductions and reimburse TRS for overpaid amounts remitted as premiums payments for deceased individuals.

- The amendments clarify that the administrative obligations related to insurance premiums withheld from retirement benefit payments are obligations of the employer, not TRS.