
**HOUSE COMMITTEE ON PENSIONS & INVESTMENTS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2004**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
79TH TEXAS LEGISLATURE**

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RETURN TO WORK/RETIRE IN PLACE

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BACKGROUND

Nationwide people are retiring and returning to work. Texas is only one of many states in which a person can retire from work and be reemployed by the same entity. Two terms are used for this practice: Return to Work and Retire in Place.

Return to Work (RTW) is when an employee reaches retirement qualifications and takes their retirement. They then return to work for the same agency, but in a different position. Retire in Place (RIP) is a case in which the person has reached retirement eligibility and retires, but remains working in their same job. Each person begins receiving an annuity check from the retirement system and receive a check from the agency they are working for. In Texas, our public pension systems have varying degrees of RTW and RIP programs.

There was a time when retirement meant you retired from the agency and could not return. Money managers and investment advisors nationwide began advising people to retire at first eligibility and go back to work elsewhere. It was a way to make the most of their income status. This practice became commonplace. Employers, however, began to suffer because they were losing valuable expertise and knowledge with each retirement. States began passing legislation to help alleviate the loss of this institutional knowledge. Texas followed suit and presently each pension system; the Employees Retirement System (ERS), the Teacher Retirement System (TRS), the Texas County and District Retirement System (TCDRS) and the Texas Municipal Retirement System (TMRS), have some form of Return to Work.

INCENTIVE BONUS/COST SAVINGS

Texas not only has a RTW program, but in the 78th Regular Session, legislation was passed offering a generous retirement incentive bonus. Beginning in 2003, if an employee of the state retired at their first eligible date, they would receive 25% of their annual salary as a bonus. Nationwide this is one of the most generous retirement incentives offered. This incentive is good through 2005.

In the agency funding process, the agency would only receive 65% of the retiree's salary thus causing the agency to hire a replacement at a lesser cost. This, of course, would generate a cost savings for the state. However, the Comptroller did not anticipate the number of people that would take the incentive bonus. In FY 2001 ERS had 3459 retirees and in FY 2002 had 4372 retirees. During the incentive period of FY 2003, 8172 state employees retired with 4794 receiving the incentive bonus. For FY 2004, the number of new retirees is projected at 4594 with a projected 2318 receiving the incentive bonus. The Comptroller submitted information stating that:

- 1. Retirement incentive bonuses paid in fiscal year 2004 will realize savings from*
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salaries budgeted for 2004 and 2005.

2. *There will actually be a net loss in fiscal year 2005 because there will be a point in the year when the 35% of the remaining budgeted salaries will not be sufficient to cover the cost of the bonus payments.*

3. *A retirement incentive bonus may be paid initially from General Revenue (GR) and then be recovered through agencies' federal indirect cost plans. The total GR savings will be reduced by the amount of bonus payments not recovered. It is our understanding at this time that the Federal DHS will allow the inclusion of the retirement bonus payment as a reimbursable cost. It is estimated that retirement incentive payments for retiring employees paid with federal funds is \$16.5 million.*

For ERS, RTW has a two-fold cost savings. Usually the retiree goes back to work for the state at a lesser salary resulting in a cost savings. Also, the state does not have to match a 6% pension contribution resulting in a savings. The active employee is covered under the same state-paid insurance program as the retiree, so there is no extra cost to the system. It needs to be noted, that while the state is not having to pay the 6% pension contribution, the employee is also not paying that contribution into the fund. The state may be realizing a savings by paying a lesser salary, but the pension system is paying a retirement annuity without being replaced by another person who would make active contributions. Presently there has been no evidence that the pension system has been adversely affected.

ERS

The number of RTW retirees has increased more than 400% since the Legislature lifted annuity restrictions and salary caps in 2001 as the result of an E-Texas Performance Review recommendation. Retirees must remain off of a state payroll for one month prior to being rehired. As of May 1, 2004 the Comptroller reported 3230 RTW retirees on agency payroll - - 1289, or 40% of those have been reported since the incentive period began.

Current RTW policy has reduced administrative difficulties for ERS since the System is no longer required to track suspended annuity payments for RTW retirees. Before 2001, ERS actuarial assumptions did not anticipate the employment of any ERS retirees since the numbers were too negligible to have an impact on the trust. ERS currently monitors the total number of RTW retirees through the Comptroller's office to determine if the practice is influencing the number of state employees retiring at first eligibility and will recommend changes to the actuarial assumptions as needed.

TRS

Each public pension system has their own rules regarding return to work. ERS and TRS are presently the only systems that allow the retiree to return to the same entity. TRS is different

in that their RTW program could end up costing the system money because of the structure of their insurance program. The funding for the teacher active and retiree insurance programs are different. The active employee's program (ActiveCare) is funded by contributions of \$150 a month by the local school district and \$75 per month by the state with the employee paying the remainder. Less than half of the school employees are members of ActiveCare. Most are covered under a spouses policy. The retiree insurance program (TRS-Care) is funded with the school districts paying .4% of payroll, the state paying 1% of payroll and the retiree paying a premium. When a retiree is added into TRS-Care, the funding has to either come from the state or by higher retiree premiums. The funding mechanism does not correlate to the program structure by basing retiree insurance contributions to active payroll.

Before September 1, 2004, a teacher became retirement eligible with at least 10 years of service, five of which could be purchased as out-of-state service. After September 1, 2004, retirement could occur at normal retirement age (the Rule of 80) with at least 10 years of service, five of which may be purchased military service. Special service purchases other than military (out of state service and air time) may not count toward eligibility in the TRS-Care program. A retiree that does not meet the insurance eligibility requirements may participate by paying the full cost until age 65.

The RTW program for TRS is structured with conditions to slow the return to work so that it does not present a strain on the retirement fund. The basic premise of TRS law disallows return to work in school positions, however, numerous exceptions exist that give employees opportunities to collect both a retirement benefit and salary. A teacher may return to work if the school district has been deemed an acute shortage area and the teacher has a 12-month break in service. Also, immediate return can occur if the teacher is hired as a substitute, working half-time or full-time up to six months. A principal or assistant principal may return full-time after a 12 month break in service and bus drivers with no restrictions. All retirees who retired prior to January 1, 2001 may return with no restrictions.

In an effort to edge around the restrictions for RTW, third party entities were created in which the teacher is hired through their firm and then placed in schools. The teacher becomes an employee of the firm and not the school district so returning to work was not in violation of the law. This provided a loop-hole in the law which was corrected by HB 2169 in 2003. This bill stipulates that employees of third party entities will be subject to the same restrictions as other school employees, if they are performing duties typically done by a regular school employee. It allowed those who were employed by the third party entity prior to May 24, 2004 to continue their employment with a grandfather clause.

Retirement rates have increased rapidly within TRS in recent years. Use of the RTW program are also increasing. There are presently 200,000 TRS retirees and 860,000 active employees. Of the active number, 100,000 are presently eligible to retire. In recent years the number of retirees has been:

2003 - 19,635 retired

2002 - 16,615 retired

2001 - 14,304 retired

Approximately 18,500 use the return to work exceptions. This number is broken down as follows for returning teachers serving as:

- Substitutes - approximately 3100 per month
- Half-time - approximately 3100 per month
- Full time up to six months - approximately 4500 per month
- Those exceeding 6 months experienced loss of annuity beginning in March, 2004 compared to 2000 annuities affected in March 2003.
- Classroom teachers in acute shortage areas - approximately 280 per month
- Principal and assistant principal - approximately 59 per month
- Bus drivers - approximately 440 per month

TCDRS

The TCDRS is different from both ERS and TRS in that it is a multi-employer plan. Counties and districts are eligible to participate in TCDRS. The RTW program in TCDRS is more restrictive than the two state plans. TCDRS retirees are not allowed to return to employment with the entity they retired from without an annuity suspension. They are allowed to go to work for another county, district or taxing authority. By returning to another entity other than the one they retired from allows the retiree to receive their annuity check as well as a salary. Should the person decide to return to work for the same employer, their annuity check is suspended. Upon termination of second employment with the same or different employer, the employee has the option to withdrawal of personal contributions and interest or an additional annuity.

Employers (particularly large urban counties) have placed themselves at a competitive disadvantage for their own employees by attempting to provide a good benefit and early retirement. Persons returning to work with the same employer are treated differently than a person that returns to work with any other employer. Payment of suspended annuities in a lump sum at the end of the second employment period can have adverse tax implications. Frequently, the reemployment is in a reduced capacity (but one resulting in the temporary loss of the annuity payments) can result in a sharp reduction in total current income and a lost opportunity for both the employee and employer. The decision to retire is not always well founded; therefore, disallowing return to work eliminates what may be the person's best option for rectifying a poor decision.

An employer has little control over a person's decision to retire, but complete control over who they hire in appointed positions; therefore, disallowing RTW with the same employer also eliminates the opportunity for the employer to recapture critical skills and experience should the employer choose. The current provisions are encouraging employers and retirees to figure a way around the existing process in order to accomplish something that is in both their interest and probably in the interest of the public.

As long as all annuitants returning to work (regardless of whether the reemployment is with the same employer or not) are required to participate, there is negligible monetary impact on the employer or TDCRS. Generally speaking, such actions tend to reduce the total benefits that will ultimately be received by the member; however, there are circumstances where it can be in the best interest of themselves or their dependent, which make it inappropriate for their use to be judged without the particular facts and circumstances. For the employers, the cost of funding benefits is not likely to be significantly impacted. For the employees, the loss of total benefits and additional required contributions are unlikely to be a significant issue.

TMRS

TMRS is a statewide, multi-employer system that provides retirement, disability retirement, and death benefits for most of the city employees in Texas. Presently, there are 796 cities that elect to participate in TMRS. Each system in TMRS is a separate plan, on both an actuarial and funding basis.

TMRS is the same as TDCRS in that returning to work for the same entity is prohibited without suspension of annuity payments. The returning retiree is required to "rejoin" TMRS and make monthly member contributions. Upon the second retirement, TMRS will resume payment of the original monthly retirement benefit. The retiree also receives an annuity for the second employment.

If a TMRS retiree goes to work for a TMRS city that was not his employer when he retired, he is required to make member contributions to TMRS. His original retirement benefit is not affected. In effect, the retiree is joining a new city that has its own separate plan under TMRS. When he later terminates this new period of employment, the person will receive a monthly retirement benefit based on member contributions, city matching funds and other credits from the new period of employment.

RECOMMENDATIONS

The RTW and RIP programs within the pension systems appears to be a positive option for employees. Each system has its own restrictions and eligibility requirements. The committee recommends the following:

- ERS - continue with the current RTW/RIP plan
- TRS - continue with the current RTW/RIP plan with careful consideration to the insurance funding and possible costs to the state.
- TDCRS - elevate their current RTW program to allow a retiree to return to the same entity they retired from
- TMRS - elevate their current RTW program to allow a retiree to return to the same entity they retired from

With elevating the TDCRS and TMRS plans, we will have all pension systems with

essentially the same standards. Monitoring the RTW/RIP programs within each fund should be carefully performed to ensure the fund is not adversely affected. Any negative experience to the funds due to RTW or RIP should trigger immediate steps to correct the problem.
