
JOINT HOUSE COMMITTEE ON “RETURN-TO-WORK”

**HOUSE APPROPRIATIONS SUBCOMMITTEE
HOUSE COMMITTEE ON PENSIONS AND INVESTMENTS**

**TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2002
A REPORT TO THE
HOUSE OF REPRESENTATIVES
78TH TEXAS LEGISLATURE**

**JIM PITTS
CHAIRMAN, HOUSE APPROPRIATIONS SUBCOMMITTEE
DALE TILLERY
CHAIRMAN, HOUSE PENSIONS AND INVESTMENTS COMMITTEE**

**COMMITTEE CLERKS
BILL DALRYMPLE
JOHN PAUL URBAN**



Joint House Committee On
"Return-to-Work"

January 10, 2003

Jim Pitts, Dale Tillery,
Co-Chairmen

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable James E. "Pete" Laney
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Joint House Committee on Return-to-Work of the Seventy-Seventh Legislature hereby submits its interim report including recommendations for consideration by the Seventy-Eighth Legislature.

Respectfully submitted,

House Appropriations Subcommittee Members

House Pensions and Investments Committee Members

Jim Pitts, Chairman

Dale Tillery, Chairman

Helen Giddings

Beverly Woolley

Tracey King

Myra Crownover

Glenn Maxey

Kenn George

Joseph Pickett

Toby Goodman

Todd Smith

Irma Rangel

George "Buddy" West

Barry Telford

Ignacio Salinas, Jr.

Tommy Williams

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INTRODUCTION

The Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, appointed a joint committee comprised of members of the House Committee on Appropriations and the House Committee on Pensions and Investments to examine the cost impacts on the state budget and the pension funds of allowing state and certain school district employees to return-to-work while receiving retirement benefits. The Joint Committee members were instructed to consider policy issues raised by such action, including differences in current law between state employees and teachers. Specifically consider the practice of "retiring-in-place." Membership of the Joint House Committee on Return-to-Work consisted of the following members of the House Appropriations Committee: Representative Jim Pitts, Chair, and Representatives Giddings, King, Pickett, Maxey, Smith and West. Membership of the House Pensions and Investments Committee consisted of Representative Dale Tillery, Chair, and Representatives Woolley, Crownover, George, Goodman, Rangel, Salinas, Telford, Williams.

The interim committee has completed its investigations and hearings and has issued its report.

Finally, the Committee wishes to express appreciation for the time and efforts dedicated to helping address these charges by the Employees Retirement System, Teacher Retirement System, Department of Mental Health and Mental Retardation, Texas Department of Criminal Justice, Department of Human Services, Comptroller of Public Accounts and other groups and associations interested in this issue.

JOINT HOUSE COMMITTEE ON “RETURN-TO-WORK”

INTERIM STUDY CHARGES

Charge

The Joint House Committee on “Return-to-Work” will examine the cost impacts on the state budget and the pension funds of allowing state and certain school district employees to “return- to-work” while receiving retirement benefits. The committee will consider policy issues raised by such action, including differences in current law between state employees and teachers. Specifically consider the practice of "retiring-in-place."

JOINT HOUSE COMMITTEE ON “RETURN-TO-WORK”

Background

In 2001, following the 77th Legislature, Regular Session, a Joint Committee of members from the House Appropriations Committee, along with the members of the House Committee on Pensions and Investments, was charged with examining the cost impacts to the state budget and pension funds of allowing state and certain school district employees to “return-to-work” while receiving retirement benefits. The Joint Committee was also asked to consider the policy issues raised by such action, including differences in current law between state employees and teachers. In addition, the Joint Committee was directed to specifically consider the practice of “retiring-in-place.” The term “retiring-in-place” refers to the practice of individuals retiring from their current position and “returning-to-work” in the same or a similar position in the same field, and sometimes with the same employer. In doing so, individuals receive a salary and an annuity and often transfer responsibility for their insurance from employer to the retirement system.

In order to address the charge before them, the Joint Committee members held two public hearings in Austin to gather information and discuss the impact of changes made last session to the laws governing state employees and certain school district employees to “return-to-work” while receiving retirement benefits. Oral and written testimony was presented to the Joint Committee members at the hearings and the comments provided were instrumental to the development of the findings and recommendations contained in this report.

Comptroller’s e-Texas Performance Review and Senate Bill 587

In December of 2000, the Office of the Comptroller of Public Accounts published a report entitled “The Report of the Texas e-Commission.” This report includes a list of recommendations for consideration by the 77th Legislature. Chapter 4 of the list of recommendations, entitled “Human Resource Management” includes as its first recommendation the development of a statewide planning process to address state workforce challenges. This recommendation includes the statement that “Texas state agencies face considerable challenges in recruiting and retaining qualified employees, and that state laws restricting agencies’ use of a major talent pool - state retirees - should be modified to expand their employment options.”

The Comptroller’s Report outlined several challenges to the Texas workforce. Up to 10 percent of the state’s workforce will be eligible for retirement within the next five years, and they will walk away with vast amounts of the state’s intellectual capital if efforts are not made to transfer their expertise to their successors. State government’s turnover rates have steadily risen over the past several years from 11.8 percent in 1993 to 17.6 percent in 1999. The State Auditor’s Office estimates the cost associated with this turnover in FY1999 to be between \$127 million and \$254 million. The average Texas state employee was 41 in 1999, while the average US worker was 33. The Comptroller’s office estimates that, of the state’s 153,800 classified positions, nearly 16,000 will be eligible to retire between 2001 and 2005.

The Comptroller’s report further states that “facing an aging workforce and continuing loss of

seasoned employees, Texas state agencies will have to seek talent in areas that were untapped in the past. One of the most viable sources of employees is the state's large pool of government retirees, who possess valuable institutional knowledge and typically do not need as much training as new hires. Moreover, retired workers save taxpayer dollars since they do not receive additional retirement benefits or insurance when rehired."

Acting upon recommendations contained in the Comptroller's "The Report of the Texas e-Commission," the 77th Legislature passed S.B. 587 to remove restrictions in state law that limit the employment of retirees. The intent of S.B. 587 is to put state retirees on an equal footing with other retirees who may compete for state jobs without sacrificing a portion of their earned retirement benefits to do so. The rationale behind the legislation was to remove laws designed to restrict retirees from drawing a full salary and full annuity. According to the Comptroller's report, the benefit of those restrictions was unclear. However, the disadvantage was that state agencies were unnecessarily restricted from making hiring decisions and using their salary appropriations within their normal discretion. (A copy of the S.B. 587 enrolled committee report can be found in Appendix A.)

Differences in Current Law Between State Employees and Teachers

The restriction found in Texas Administrative Code, Title 34, Part 4, Chapter 73, Rule 73.7 that applies to state employees who return-to-work states that a retirement shall be canceled and membership reinstated if the member holds a position in the class from which he or she retired during the calendar month following retirement. This administrative rule effectively requires that a state employee be off the payroll for one month before being rehired.

Under the Texas Government Code, Section 824.601 stipulates that a TRS retiree may not receive retirement benefits if they go back to work for a TRS-covered employer.

However, Senate Bill 273, 77th Legislature, allowed individuals retired before January 1, 2001, to go back to work in any public school position for up to full-time without restriction.

In addition, numerous exceptions to Section 824.601 are provided in Section 824.602 for those that retired after January 1, 2001. These provisions allow a retiree to return to employment for a TRS-covered employer without the loss of benefits as: a substitute at the rate of pay for substitutes (unlimited days); half-time or less; full-time up to six months; or as a bus driver. All of which must have been separated from service for at least one month. Retired certified teachers may also go back to work full-time in acute shortage areas, provided that they have been separated from service for 12 consecutive months. Likewise, retirees may work full time as principals and assistant principals once they have stayed out for 12 months.

Analysis of the Issue and Findings

Fiscal Impact to the Employees Retirement System

| Employees Retirement System Time Line for “Return-To-Work” | |
|---|--|
| September 1, 1951 | During time of conflict, retirees could return-to-work for 12 months. There would be no payments and no contributions. |
| April 19, 1957 | Same as above except there was no limitation on time re-employed, provided the retiree is appointed by the Governor and confirmed by the Senate. |
| September 1, 1958 | Retiree could return to employment for nine months; however, no retirement payments would be made. |
| August 30, 1965 | Retiree could return to employment for six months. After six months of re-employment, retirement payments would be suspended and resumed when member leaves employment. |
| September 1, 1981 | A retired employee may receive both a retirement warrant and pay for six months in any fiscal year. Benefits will be suspended after six months until termination or new fiscal year. |
| September 23, 1986 | Retirees who retired under the incentive retirement program (from November 30, 1986 to May 31, 1987) could not return to state employment. |
| August 31, 1987 | Return-to-work prohibition for those taking the incentive retirement was repealed. A retired employee may receive both an annuity and salary for six months in any fiscal year. Annuities will be suspended after six months until termination or new fiscal year. |
| September 1, 1991 | Retiree could return-to-work for nine months and receive both annuity and salary. After nine months, the annuity is suspended until termination or new fiscal year. |
| September 1, 1997 | The salary of a return-to-work retiree or retiree hired under contract was limited to the lesser of the annualized salary of the last 12 months of service before retirement, or \$60,000. |
| September 1, 2001 | S.B. 587 removes annuity restrictions and the salary cap. |

As of August 31, 2001 there were 149,956 active contributing members of the Employees Retirement System (ERS) and 47,392 retirees and beneficiaries. This represents a 40 percent increase in the number of retirees since FY1995. ERS estimates that 19.8 percent of all regular state employees will retire during the first year of eligibility. Currently there are 11,593 employees eligible for retirement. The number of return-to-work employees has been increasing over the past few years; in FY1999 there were 469 return-to-work employees, in FY2000 there were 555, in March of FY2001 there were 790. The Comptroller’s office estimates that there are currently 1,146 return-to-work retirees. This current number equates to two percent of the State’s retirees.

According to ERS, under the current law there is less cost to the State - assuming the position is filled by a retiree because there is no retirement contribution (six percent of salary) and there is no new insurance cost. The current law gives agencies flexibility in who they hire and gives them the ability to fill key needs. The ERS actuary states that there are no actuarial problems for the trust fund; however, it should be monitored to determine if retirement trends are impacted.

According to ERS, those retirees that utilize “return-to-work” are typically individuals planning short stints at their current positions after their retirement date to finish certain projects or provide consulting services. ERS states that current records indicate return-to-work is used sparingly.

Fiscal Impact to the Teacher Retirement System

The fiscal impact of allowing normal age retirees to return-to-work full-time without loss of annuity benefits as estimated by TRS:

- Impacts to the Pension Fund (based on actuarial valuation of Aug. 2000)
 - Actuarial note, 77th Legislature, of a proposal to allow full benefits with return to employment after a two-month break in service (calculated before the multiplier was raised)
 - Increased unfunded liability by \$5.5 billion
 - Raised normal cost by 1.28 percent of pay
 - Could never be funded without additional contributions
 - Required a state contribution of 7.11 percent to maintain 30-year funding period
- It is noted by TRS that any changes at this time that would impact liabilities would likely require additional funding.
- Impacts to TRS-Care
 - Program cost increases by about \$4,000 per person, per year for each new non-Medicare participant.
 - Program revenue automatically decreases due to the elimination of the .50 percent state contribution and .25 percent active member contribution based on active member payroll.
 - TRS notes that for each retiree returning to work, the State would not pay the employee's \$83.33 per month, nor the \$75.00 per month to the district, due to the new statewide employee health care program.

There are currently 49,323 members of TRS eligible for normal age retirement, of this number 20,748 are teachers.

“Return-to-work” has proven to be a larger issue with its utilization by TRS retirees than that of ERS, specifically, with the retirement and rehiring of teachers. According to the House Committee on Public Education, based on information provided by the State Board for Education Certification, the state might fall short 37,000 to 40,000 certified teachers of the 289,000 needed for Texas classrooms. It is equally alarming that over 20,000 current teachers are eligible for normal age retirement.

Texas law currently allows for the rehiring of retired school employees in the public school system to draw both an annuity and salary based on the certain criteria. The retirees must sit out for at least

a full calendar month before returning-to-work. The criteria are as follows:

- Work as a substitute teacher with no limitations on the amount of days
- Work in any position for half-time or less
- Work in any position full-time for 6 months
- Work as a certified teacher in an acute shortage area (after a 12 month separation of service period)
- Work as a certified principal or assistant principal (after a 12 month separation of service period)
- Work as a bus driver full-time

Liberalizing the separation of service requirements has been discussed as well as the discovery of retired teachers returning to work via third-party, temporary staff leasing firms. These individuals contract their services to firms that are then contracted with local school districts. By using the third-party entities, retirees returning-to-work are avoiding any separation of service requirements or less of retirement benefits.

The consequences of a retiree returning-to-work with less than the current requirement of separation of service, or none at all, was discussed in a letter addressed to TRS from the actuarial firm of Gabriel, Roeder, Smith & Company, dated September 9, 2002 (Appendix B). The letter focuses on the liberalization of the “return-to-work” provisions and the possible impact on TRS.

The letter states,

“The critical issue in any return-to-work provision as it relates to the actuarial consequence is whether the provision will alter the basic retirement pattern of members. If the provisions encourages the members to retire earlier than they otherwise would have, then there is going to be an adverse actuarial consequence. On the other hand, if the provision delays the otherwise anticipated behavior pattern, it will reduce the actuarial consequence.”

The Committee notes that anything that allows and/or encourages public school employees to retire sooner than they would have will have an actuarial cost for each individual and could have an adverse actuarial impact on the TRS pension trust fund. Furthermore, such an impact would lessen the opportunity for the legislature to provide future benefit enhancements.

On behalf of the committees, Chairman Tillery requested an Attorney General’s opinion regarding the Constitutionality of third-party, staff-leasing firms. The request covered three concerns raised by the committees’ membership during interim committee hearings. (The request reference number is RQ-0584-JC; a copy of the letter can be found in Appendix C.)

Committee does not recommend that any changes to current statute or agency rule be taken by the legislature or Employee Retirement System at this time. The Joint Committee does recommend that ERS continue to monitor the number of retirees who return-to-work to determine if it encourages state employees to retire earlier than they would have otherwise.

With regards to “Return-to-Work” and the Teacher Retirement System, it is the recommendation of the Joint Committee that return-to-work options be conservatively administered so as to ensure there is no threat to the TRS fund.

Rationale: The Joint Committee believes that current law provisions, including the newly-enacted provision of SB 273 regarding retirees before January 1, 2001, allows significant flexibility for TRS retirees to return to work. The Committee also feels that those provisions should not be used simply as a vehicle for individuals to receive both a salary and an annuity while remaining in their current position. Moreover, the Committee advises against any actions that may lift or reduce the separation from service requirements or the circumvention of those requirements, which could have an adverse actuarial impact on the TRS retirement fund.

APPENDIX A.
ENROLLED VERSION OF SB 587 AND BILL ANALYSIS

APPENDIX B.
ACTUARIAL REPORT FROM GABRIEL, ROEDER, SMITH & COMPANY

APPENDIX C.
ATTORNEY GENERAL REQUEST LETTER FROM REPRESENTATIVE TILLERY
