MINUTES OF THE
ADVISORY COMMITTEE ON BENEFIT DESIGN
OF THE BOARD OF TRUSTEES OF THE
TEXAS MUNICIPAL RETIREMENT SYSTEM

On June 23, 2016, the Advisory Committee on Benefit Design (the Committee) of the Board of Trustees (Board) of the Texas Municipal Retirement System (TMRS) convened for a meeting at 8:05 a.m. at TMRS Headquarters, located at 1200 North IH 35, Austin, Texas. The following members were present:

Advisory Committee Members
Bill Philibert, TMRS Trustee and Advisory Committee Chair
David Landis, TMRS Trustee
David Crow, Arlington Professional Fire Fighters (APFF, Alternate)
Keith Dagen, Government Finance Officers Association of Texas (GFOAT)
Michael Dane, Assistant City Manager, City of San Angelo
Victor Hernandez, City Councilman, City of Lubbock
Bryan Langley, Asst. City Manager, CFO, City of Denton
Heidi Manti, Service Employees International Union (SEIU, Alternate)
Julie Masters, Mayor, City of Dickinson
Tadd Phillips, Texas Municipal Human Resources Association (TMHRA)
David Riggs, Texas State Association of Fire Fighters (TSAFF, Alternate)
J.J. Rocha, Texas Municipal League (TML)
David Russell, Texas Municipal Police Association (TMPA)
Greg Shipley, Combined Law Enforcement Associations of Texas (CLEAT)
Lori Steward, City of San Antonio
Greg Vick, Texas City Management Association (TCMA)
Charles Windwehen, TMRS Retiree

The following staff, consultants and guests were also present:

David Gavia, TMRS Executive Director
Eric Davis, TMRS Deputy Executive Director
Christine Sweeney, TMRS General Counsel
Dan Wattles, TMRS Director of Governmental Relations
T.J. Carlson, TMRS Chief Investment Officer
Leslee Hardy, TMRS Director of Actuarial Services
Bill Wallace, TMRS Director of Communications
Sandra Vice, TMRS Director of Internal Audit
Madison Jechow, TMRS Assistant General Counsel
Melanie Thomas, TMRS Editor
Anthony Mills, TMRS Regional Manager – City Services
David Rodriguez, TMRS Regional Manager – City Services
Ariel Chou, TMRS Actuarial Analyst
Tish Root, TMRS Legal Assistant
Stacy White, TMRS Executive Assistant
Amy McDuffee, Aon Hewitt
Joe Newton, Gabriel, Roeder, Smith & Company
Matt Lamon, Chief of Staff, Representative J.M. Lozano’s Office
Mr. Philibert called the meeting to order at 8:05 a.m.

1. **Welcome and Introduction** – Mr. Philibert welcomed the Committee and guests and introduced Mr. Landis standing in as Vice-Chair for Roy Rodriguez. Ms. McDuffee asked the members at the table to introduce themselves. Guests in the audience were recognized.

2. **Review of the Agenda and Schedule for Interim** – Ms. McDuffee summarized the meeting agenda and reviewed the Committee’s charge, noting the goal is to provide a list of advantages and disadvantages regarding the study topics and be a communication conduit with the Board as well as with TMRS’ constituents. She also reviewed the schedule and goals for the interim session through August. Mr. Crow asked what the “end goal” was for the work done by the Committee and what will the Board do with the results of today’s meeting. Ms. McDuffee noted that there are multiple pathways the Board can take from this meeting. Mr. Gavia stated that staff will give interim updates to the Board regarding the topics discussed, including a summary of the discussion, but it will ultimately be the Board’s decision on the direction it will take regarding possible legislation based on the information it receives. Mr. Philibert noted there is an interest among Board members regarding these topics.

3. **Presentation and Discussion on TMRS Return to Work (RTW) Provisions**

   Joe Newton stated that it has been a few years since there has been discussion on RTW, noting that RTW creates challenges for all public retirement systems. Depending on the scenario, RTW can either be cost neutral, or can change patterns of retirement and add significant costs to the employer’s plan. Retirees may return because they cannot afford retirement or are bored, or employers may ask retirees to return to work; however, if RTW policies are so lenient they encourage earlier retirements, it changes behavior and increases costs. RTW provisions also increase political and public criticism of “double dipping.” Mr. Newton discussed the meaning of “lenient” in this scenario. Mr. Crow noted not to overlook the “double dipping” issue in light of HB 408 from last session; an anti-double-dipping bill. Joe Newton responded to a comment by Michael Dane regarding assumptions versus actual experience, stating that in a traditional pension, RTW provisions that encourage early retirements add more costs; however, cash balance plans are not impacted as much because the annuity is based on reserves and interest earnings. Mr. Gavia added that if retirements occur sooner than expected, there is less time to accumulate assets to pay out benefits.

Mr. Newton next reviewed the current provisions regarding RTW to the same city, noting the suspension and forfeiture of the monthly benefit. He noted the eight year gap provision where the suspended payments are returned in a lump sum at re-retirement. Mr. Newton also reviewed the RTW provisions where a retiree returns to work for a
different city. Ms. Hardy reviewed the RTW statistics as of December 31, 2015, as presented in the GRS report for this presentation. It was noted that the retirees that have returned to work is a small percentage of the total retiree population, but with an aging workforce, the issue may become more relevant. Mr. Newton also added that these numbers could increase if TMRS enhances the RTW provision.

Mr. Newton reviewed national trends noting they range from suspension of benefits to in-service distributions. The IRS has recently provided proposed normal retirement age rules, including in-service distribution provisions. Ms. Sweeney noted that the new IRS rules on normal retirement age are complicated, and that it is important to be aware that any changes to RTW that allow in-service distributions would need careful analysis and possible additional TMRS plan amendments.

Mr. Newton noted that the factors of an aging population and rising health care costs may contribute to an increased number of retirees desiring to RTW and from an employer’s perspective, may be a desirable pool from which to recruit.

There was a pause for introductions of Heidi Manti, Julie Masters and David Riggs.

Mr. Wattles then reviewed the legislative history behind the current provisions and the various proposed changes. Mr. Wattles stated that the current provisions were largely adopted in 1995 and, prior to that, if a retiree returned to work at any TMRS city, all payments were suspended and forfeited and RTW retirees did not rejoin the system. Mr. Davis recalled that there was some concern prior to 1995 that a city might encourage an employee to retire and receive an annuity but then have the employee return to work and the city would pay only the difference between the annuity and the prior salary. Mr. Wattles stated that in 2011, the eight-year break in service provision was adopted after legislation was filed by the Laredo delegation which allowed retirees who had at least an eight-year break in service before returning to work to receive a lump sum equal to their suspended payments upon re-retirement. In 2015, two bills were filed by Representative J.M. Lozano that did not pass but proposed interest on suspended payments and recalculation of the original annuity at the current age, with any COLA granted during the suspended period.

In response to a question from Mr. Crow about the legislative climate, Mr. Wattles stated that anything that looks like a benefit enhancement is likely to be scrutinized.

Mr. Dane discussed an actual situation where a retiree has returned to work for the same city because of health care costs for the retiree’s spouse. Mr. Dane stated that he hated to see the city getting actuarial gains because that retiree’s annuity is suspended while the retiree is working to address the health care costs. Mr. Langley asked if an exception to suspension for demonstrated financial hardship might be possible. Mr. Vick stated that qualifying event standards from medical insurance might provide a model for that.

Mr. Newton reminded the Committee that the discussion on RTW needs to center around the loss of annuities rather than seeing this as a benefit enhancement.
Mr. Newton introduced the RTW features to be studied. The first feature was the length of separation which still must include a bona fide separation component. Since there is no “bright line” from the IRS regarding definition of “bona fide” separation, the question becomes what is the right length of break before returning to work. In response to a question from David Crow, Mr. Newton stated that most RTW provisions were put in place before the recent IRS guidance on normal retirement age. GRS recommends at least a one year break in service, and Ms. Sweeney said that TMRS’ outside tax counsel generally recommends at least a one year break. In response to a question from Mr. Langley regarding the impact of adding a minimum length of service threshold with the required separation period in order to be eligible to return to work, Ms. Hardy stated that it would not reduce the cost per person but would reduce the number of people returning overall. Mr. Windwehen asked how often do retirees have a prearrangement with an employer to return to work? Mr. Newton said that it likely does not happen often under the current TMRS plan but in other plans, with more favorable RTW features, it does happen.

Mr. Newton stated that the shorter the separation period, the more likely it will change retirees’ behavior, i.e. employees will plan to retire earlier, take a partial lump sum payment with the intention of returning to work. If RTW changes increased retirement behavior by 20%, the average increase in employer rates would be from 0.03% to 0.13%.

Mr. Newton continued with describing the features to be studied. First, GRS recommends no change for members who RTW less than one year after retirement. In all options proposed by GRS, the retiree must rejoin TMRS and participate in new accruals under a new TMRS account, as under the current policy.

Option 1: No change to RTW provisions

Option 2: Treat RTW retirees at same city after 1-year break just like retirees who work at a different city, i.e. no suspension of the annuity.

Option 3: Decrease the current 8 year break in service requirement to 1 year with the annuity still suspended, but accumulated suspended payments are paid to retiree at subsequent retirement without interest in a lump sum payment.

Variants of Option 3:

- Provide interest on suspended payments payable in a lump sum at re-retirement.

- Annuitize accumulated balance (with or without interest) of suspended payments based on original annuity option at current age and add to original annuity.

The group then discussed how the variant of Option 3 could mimic a DROP (Deferred Retirement Option Plan) account.
In response to a question from Mr. Crow, Mr. Newton stated that TMRS’ current partial lump sum option mimics the “cash at retirement” feature of a DROP. A DROP looks like an in-service distribution as discussed earlier and a DROP could also greatly affect behavior and therefore affect costs. Mr. Wattles opined that a DROP is what brought newspaper scrutiny of a Dallas retirement system. Mr. Newton reviewed the specifics of DROPs and affirmed that DROPs do exist in Texas. Mr. Crow stated that it is not DROPs that create pension problems but rather contribution holidays. Mr. Newton stated that participants in cash balance plans like TMRS should not elect DROPs because freezing the growth of the retirement benefit, as in done in DROPs, offsets the compounding factor of interest in a cash balance plan where the compounding has a greater effect as the employee gets older.

Mr. Newton then presented benefit examples associated with each of the three options. He opined that options 1 and 2 (if applied prospectively) would not change city contribution rates.

Mr. Riggs asked if current city managers saw the current TMRS plan with respect to RTW as a problem? He stated that with the legislature not interested in seeing benefit enhancements, TMRS would have to show the advantage to city employers to change the current plan. Mr. Vick stated changing the current plan might have more benefit for rural, as compared to urban cities, as rural cities could better tap into experienced city employees without asking employees to drive long distances for returning to work. Members discussed whether part-time work allows cities to meet their needs without changing the current TMRS plan and whether this could be provided on a local option basis if the current TMRS plan changes with respect to RTW issues.

Mr. Newton next discussed who should these changes apply to and the relative cost impact: 1) future retirees only – low to no cost; 2) current retirees who have not yet returned to work – low to no cost if applied prospectively; 3) retirees who have returned to work but not yet re-retired – low cost if applied prospectively, but if applied retrospectively, will have a wide range of costs based on individual city usage; and 4) retirees that returned to work and already re-retired- could add significant cost based on individual city usage. Mr. Newton graphically projected the impact on contribution rates, if suspended payments with interest are returned to the retiree. Mr. Gavia asked if there was a way to extrapolate how this would look if suspended annuities were paid to retirees without interest. Mr. Newton responded that it would reduce the cost by about 2 basis points on average.

Mr. Philibert called for a break in the meeting at 9:55 a.m. and reconvened the meeting at 10:05 a.m.

Ms. McDuffee asked the Committee members for comments and to couch their comments in terms of advantages or disadvantages of the proposed options.

Ms. Masters: Given temperature of the Legislature, I am not sure why we are discussing this; has anyone brought this up as a problem? If not a problem, I recommend the status quo.
Mr. Riggs: I second the comments of Ms. Masters. I am not for asking the legislature to review employee benefits unless cities state there is a big benefit to it. TMR5 is the most defendable retirement system in the state. I might be convinced to ask the legislature to review employee benefits if I hear that it is a win for cities as well as for employees.

Mr. Shipley: From a law enforcement perspective, the career has changed so much as a result of a shrinking application pool, that this has created problems in the law enforcement community. So Option 2 with local control to a city might help alleviate some of the problems with the applicant pool. Mr. Crow asked how do you prevent gaming the system under Option 2 and why would people retire other than to “double-dip”? Mr. Shipley responded that he has seen employees retire just for partial lump sums where the retiree finds afterward that the city will not reemploy them.

Mr. Dagen: I also like option 2 but with the addition of a salary limitation (don’t suspend the annuity unless a certain amount of salary is earned). I think most people view RTW as a management benefit, but with a salary cap it would help with emergency situations where a retiree is working under duress.

Mr. Langley: I view Option 2 as best because it is cost neutral and the 8-year gap seems arbitrary. I am struggling to understand why we care; we keep talking about double-dipping, but is that costing the cities or is it cost-neutral? If cost-neutral, we would need to get “double-dipping” out of our vocabulary. Mr. Newton stated that is why requiring a one-year break in service is recommended, because that will limit the impact on people in making their decision about their first retirement; if the period before returning to work is too short, there is greater risk of retirees getting both annuity and salary. Any retiree with higher pay will be subject to that criticism. Mr. Crow added, if the discussion is before the legislature on RTW issues, that will be an issue and the term double-dipping will be used.

Mr. Windwehen: I concur with comments of Bryan Langley; double-dipping is more a perception problem rather than a real problem; there are no concerns about returning to work in private industry, so there is a double-standard for public employees.

Mr. Phillips: I agree with Greg Vick’s comments earlier about local control and differences in urban versus rural city concerns; I prefer Option 3, which would address the loss of annuity payments for individuals without creating an incentive for retirees to return to work. Mr. Gavia asked him what is it about Option 3 that is appealing? Mr. Phillips responded that Option 3 makes an individual whole at the end (at the second retirement), although we need to discuss whether to pay the suspended payments with or without interest.

Mr. Philibert recognized Stephen Emerson, who is from the City of Corpus Christi and who was allowed to comment. He mentioned the change in mortality for returning to work and agreed there should not be double dipping but asked that the retirement annuity be recalculated and based on the higher age of the retiree when they retire for the second time. He stated that he preferred Options 2 or 3.
Mr. Russell: I support Option 2 but I am concerned about managers using that to rehire retirees based on favoritism.

Mr. Langley: If there was a cost to option 2, maybe the service threshold would be a compromise that makes option 2 more palatable.

Mr. Newton recommended that at its next meeting the Committee ask, “what exact question we are trying to address with this?” In response, Mr. Gavia stated that Board questions included the perceived inequity to employees returning to the same city as compared to retirees working at a different city, some questions about how the RTW works for employees at the same cities, and how the second retirement is calculated.

Mr. Landis stated that he and Mr. Philibert will do their best to relay the Committee’s opinions to the Board. He noted he was personally conflicted on Options 2 and 3, and one thing that continues to resonate with him is that perception becomes reality in this day and time, and he is not sure we want to present anything to the Legislature this year.

Mr. Langley added that if a proposal on the RTW issue makes sense at some point maybe it is not an issue to take to legislature alone but something to include as part of a package before the legislature.

Ms. McDuffee asked if there was general agreement on the follow-up items, but additional comments were made:

- Mr. Dane expressed interest in Option 2 to address the confiscation of annuity payments for an employee that returns to work in crisis; Mr. Riggs and Mr. Russell asked where you draw the line on qualifying events;

- Mr. Vick noted that we need to continue to control costs and not do anything that will increase incentives to early retirement; thinks option 2 is best idea presented;

- Mr. Langley suggested increasing the 1-year separation period if it would help address concerns about Option 2;

- Mr. Riggs still wants to focus on the “why” because if this cannot be sold, it is not worth the effort; and

- Mr. Hernandez noted that elected officials are risk-adverse and tend to be timid in not wanting to push the envelope. He recommended keeping this in mind when developing the legislative agenda.

Joe Newton added if you go with option 3 without interest, and make it apply to retirees who return to work at a different city as well as retirees who return to the same city, the message in the bill is that you are getting rid of double-dipping while protecting people in regard to their suspended annuities that will be returned upon second retirement.
4. Presentation and Discussion on TMRS COLA and Retroactive Provisions
Mr. Wattles began this discussion with a history of legislative actions regarding COLAs. He noted that the current structure was adopted in 1981 when TMRS moved to a CPI-based COLA from a fixed rate COLA. In 1991, repeating and ad-hoc COLAs were allowed. But, the retroactive feature has been in place since 1981. There has been a COLA bill in each of the last four sessions, none of which were TMRS-sponsored bills. Mr. Wattles reviewed city and annuitant COLA coverage as included in the presentation for this meeting from GRS.

Mr. Newton reviewed the current COLA options. He next provided a short-term analysis of ad hoc versus repeating adoptions, noting the differences in funding approach, funded ratios, cost increases, and reporting requirements. The long term analysis is that cumulative contributions are more for ad hoc COLAs than repeating COLAs because repeating COLAS are pre-funded through contributions and investment earnings.

Mr. Crow asked which cities represented at this meeting have ad hoc COLAs? San Antonio was the only city which responded affirmatively.

Mr. Newton changed focus to the fact that COLAs are retroactive. He basically defined the retroactive “catch-up” feature.

He first discussed non-retroactive COLAs:

- **Advantages:** Less costly because benefit is smaller; can help better control costs; can help dampen liability growth; and provides additional options for cities.

- **Disadvantages:** may not keep pace with inflation and consumer price index (CPI); does not restore lost purchasing power; and adds administrative complexity.

Mr. Newton then compared the CPI-based COLA to a flat rate COLA. CPI-based is simple and easier to administer, while flat rate is more flexible but adds administrative complexity and must be carefully crafted to stay consistent with IRS regulations.

Mr. Newton next reviewed repeating COLAs, with and without catch-up and a flat rate. He then reviewed associated costs for a city that has never adopted a COLA, with and without catch-up and flat rate, both on an ad hoc and repeating basis.

Mr. Riggs asked if there were older cities that have not provided a COLA for a long period of time because of the large percentage increase to adopt an ad hoc or repeating COLA and because the benefits increase would be so big, greater than 10% increase in annuity? Mr. Newton responded that for cities that have been in system for quite a while; most have COLAs and most of those are repeating COLAs because COLAs are cheaper to provide when there are fewer retirees. Ms. Hardy added that for a city with fewer retirees than active members, i.e., a younger city, COLA changes are not as big of an impact on rates, whereas a more mature city (more retirees) with a long time span before adopting a COLA, would have a larger impact on rates.
Mr. Riggs: I’m not sure about the flat rate COLA; Dallas’ fire system has an issue because it’s had a flat rate 3% COLA for years that has been higher than inflation for years; I can’t see any way to defend a flat rate COLA.

Mr. Vick: The flat rate COLA may have to be written so that it has a cap tied to CPI.

Mr. Riggs: we could get to same place by offering an option at 100% of CPI.

Mr. Langley: what is the objective, what is issue we are trying to solve here? If some cities haven’t had a COLA for long time but want to get back into offering it, is that the concern? Cities with an annual repeating COLA do not have a problem.

Mr. Vick: it is my belief that for some city managers this becomes a budget issue because you can control costs by having more flexibility with regard to ad hoc COLAs where retroactivity is not required; one or two of those cities may have been the source of legislation introduced in recent years. Ms. Hardy noted that the retroactive cost has not been as significant in recent years because inflation has been so low.

Mr. Phillips: I’d heard in previous sessions that “those who opted out made their beds” but if I read the slides correctly, 11,000 current retirees do not have COLAs; does our system, as written, contribute to fact that those 11,000 may never see a COLA again? We should give them an opportunity for a future COLA. I agree with concerns about a flat rate COLA, but would removing the retroactive requirement lead to future COLAs?

Mr. Dane: I agree with concerns about flat rate COLAs and that the increasing number of retirees without a COLA is concerning. I’d be an advocate for all our retirees to receive some COLA, so I like removing barriers to entry to a COLA and providing a long-term solution. Mr. Newton commented that the problem is the up-front cost (but not the long term costs) of a repeating COLA.

Mr. Crow: from a labor standpoint, some cities that are providing an ad hoc COLA are gaming the system, saying they offer a benefit but not paying for it; so without the retroactive feature, it will be hard for cities without repeating COLAs to balance budgets; maybe cities with a long gap since their last COLA will have to look at other options to benefit retirees. I am not sure that changing the entire system is the right thing to do; there’s been people trying to work to get COLA back, finding city savings elsewhere, but the city has not followed through with the COLA; we may be an anomaly as compared to other statewide systems.

Mr. Riggs: the current design does allow local option for a city to drop the COLA benefit and balance its budget; eliminating that control from individual city councils would not be popular at legislature; I think it is worth discussing with our respective groups a one-time catch-up for COLAs; this is not a cost sharing feature between employee and employer.
Mr. Vick: we’ve had some city councils that have put off COLAs and they’ve gone so long without adjusting it that it makes it hard to adjust now; it’s hard for retirees without a COLA when there is no adjustment to their situation.

Mr. Dagen: I don’t mind having a non-retroactive ad hoc COLA, a city still has to have the willpower to address the cost; cities are now wrestling with compensation at multiple levels, including retirement, health care and salary; looking at the cities that are currently ad hoc, those are some of the largest in system and we’ll see more retirees without any COLAs in the future if we maintain the status quo.

Mr. Hernandez: TMRS has an investment portfolio, is there any mechanism by which some of the cities can get back on track by borrowing money from TMRS from excess investment earnings? Ms. Sweeney stated that TMRS may not have the statutory authority to do that.

Ms. McDuffee asked for advantages and disadvantages on this issue:

Mr. Crow: we’re dealing with a group of cities that made COLA decisions when contribution rates were higher. Mr. Newton agreed and stated that some of those trends occurred around 2012 when contribution rates were higher overall. Mr. Davis stated that a handful of cities went back to repeating COLAs during that time. Mr. Gavia added that there are cities that are currently ad hoc that will be faced with a decision to go to repeating or to drop COLAs altogether. Ms. Hardy affirmed that there are six cities that she has worked with that are looking at moving from ad hoc to repeating COLAs and that first question she asks them is “do you want to provide COLAs as part of benefit package going forward” and, if “yes,” then we need to figure out a way to get to repeating COLA.

Mr. Vick asked Ms. Hardy whether the cities with whom she works contributes more than their required rate to work up toward a repeating COLA, and Ms. Hardy said they did. Mr. Vick suggested that there might be the answer.

Mr. Riggs requested a list of cities that never adopted COLAs (include number of retirees and ratio of actives to retirees). He asked how many cities would benefit from changing the retroactivity requirement and have any of those cities experienced an economic change that would help with this?

5. Review of Session

Ms. McDuffee asked for any other requests for information that can be brought back for next session?

Mr. Langley: The ad hoc COLA intuitively seems like it is one year at a time; with retroactive requirement that does not seem truly ad hoc; I would be curious to know if other systems that have COLAs have this ad hoc and retroactive feature, and if so, is that common? Ms. Hardy stated that TCDRS has this feature. Mr. Langley added that he doesn’t perceive the option of having an ad hoc COLA as a bad thing, but as a benefit for a city that is trying to provide something.

Mr. Riggs: what have other states and systems done regarding restructuring COLAs and what were the results? Ms. McDuffee responded that Keith Brainard
from NASRA made a presentation on COLAs, and she can distribute that information again to the Committee members.

6. **Discussion of Agenda for Next Committee Meeting**
Ms. McDuffee reviewed the next steps and told members to expect to hear from TMRS staff regarding a survey on study issues discussed today. Mr. Gavia asked the Committee members to feel free to contact staff with additional requests, questions or experiences.

7. **Public Comment**
Mr. Philibert recognized George Kauffman, representing the City of Garland. Mr. Kauffman stated that he wished to respond to comments suggesting that some cities have been undisciplined in providing benefits and rather focusing on other budget needs. But in 2008 or 2007, when TMRS moved to projected unit credit, my city became aware of the true cost of COLAs and USC; that combined with the economy in 2008 resulted in a $16 million deficit, so that was what resulted in dropping the COLA. My city has provided one salary increase since 2008. So I suggest to you that in some cases the reasons that some cities are not providing COLAs has been related to lack of revenue streams.
Mr. Philibert stated that he appreciated the energy and dialogue today and that he did not always see that energy and dialogue in groups of this type. Mr. Landis seconded the comments from Mr. Philibert and said that it is important for the TMRS Board to hear from you.

Mr. Philibert adjourned the meeting at 12:01 p.m.

David Gavia
Executive Director

Bill Philibert
Chair