

AGENDA ITEM DETAILS

Subject: Consideration of Re-adoption of Rules of the Board of Trustees, Texas Administrative Code, Title 34, Part IV, Chapter 61 (Terms and Phrases), Chapter 63 (Board of Trustees), and Chapter 65 (Executive Director), with Proposed Amendments - (Action)

RECOMMENDED ACTION:

Move that the Board of Trustees readopt Texas Administrative Code, Title 34, Part IV, Chapters 61 (Terms and Phrases), 63 (Board of Trustees), and 65 (Executive Director), as revised by the proposed amendments detailed in Exhibits A, B, and C to this agenda item.

Background/Analysis:

Required Rule Review

Pursuant to Texas Government Code, Section 2001.039, state agencies are directed to review administrative rules every four years to assess whether the reasons for adopting the rules continue to exist. Pursuant to statute, Employees Retirement System of Texas (ERS) staff reviewed Chapters 61 (Terms and Phrases), 63 (Board of Trustees) and 65 (Executive Director) and determined that the reasons for adopting all three chapters continue to exist.

The review also identified the need for revisions to the specific content of each of the three chapters as detailed in the attached exhibits to this agenda item. The revisions are necessary: (1) to improve the transparency and clarity of the rules to a public audience; (2) to implement the operational provisions of recently passed legislation; and (3) to continue improving the operational efficiency of agency activities to serve ERS member populations.

Notice of the proposed rule review for Chapters 61, 63 and 65 was published in the October 22, 2021 issue of the *Texas Register* (46 TexReg 7194), as required by statute. **ERS did not receive any public comment regarding the proposed rule amendments.**

Proposed Amendments to Chapter 61 (Terms and Phrases)

Review of Texas Administrative Code, Title 34, Part IV, Chapter 61 (Terms and Phrases), was conducted pursuant to Texas Government Code, Section 2001.039. This chapter provides definitions of certain terms and phrases used throughout ERS administrative rules for consistency and clarity.

ERS staff proposes the amendments to Chapter 61 (Terms and Phrases), included in this agenda item as Exhibit A, to clarify and simplify the language used in the rules for a public audience. The amendments are not intended to change the meaning or application of the rules from previous versions. The full text of the proposed revisions is provided in Exhibit A.

Proposed Amendments to Chapter 63 (Board of Directors)

Staff reviewed Texas Administrative Code, Title 34, Part IV, Chapter 63 (Board of Directors) pursuant to Texas Government Code, Section 2001.039. This chapter covers Board of Trustee operations, including duties, election activities, and advisory committees.

As a reminder, the Board approved amendments to this chapter in December 2020 to allow for more efficient electronic election processes and in April 2021 to allow the board to seat an election candidate without conducting an election if they are the sole candidate meeting the criteria to be placed on the election ballot. ERS staff proposes amendments to Chapter 63 (Board of Directors), included in this agenda item as Exhibit B, to implement the provisions of recently passed legislation. As amended by the 87th Legislature, Texas Government Code, Section 815.003, now permits a retiree to run for election to the Board of Trustees. Other proposed amendments seek to clarify and simplify the language used in the rules for a public audience and do not change the meaning or application of the rules from previous versions.

Amendments to Section 63.3 Election of Trustees (Nomination Process) contains the primary language implementing the amendments to Texas Government Code, Section 815.003. This new language clarifies the employment or retirement qualifications needed to be considered for placement on an election ballot. Specifically, the language prevents retirees from running for an elected seat if another retiree already holds an elected seat on the board. The language also establishes a waiting period before certain ERS agency employees can run in an election to reduce the potential for conflicts of interest. The full text of the proposed revisions is provided in Exhibit B.

Proposed Amendments to Chapter 65 (Executive Director)

Staff reviewed Texas Administrative Code, Title 34, Part IV, Chapter 65 (Executive Director), pursuant to Texas Government Code, Section 2001.039. This chapter addresses the authority of the ERS Executive Director, including duties and delegation authority.

ERS staff proposes the amendments to Chapter 65 (Executive Director), included in this agenda item as Exhibit C, to clarify and simplify the language used in the rules for a public audience and ensure alignment with the related authorizing statutes. The full text of the proposed revisions is provided in Exhibit C.

Staff Recommendation:

Move that the Board of Trustees of the Employees Retirement System of Texas take the following actions with regard to the Rules of the Board of Trustees promulgated in Texas Administrative Code, Title 34, Part IV, as set forth in Exhibits A, B and C, which are attached and incorporated by reference into this agenda item.

1. Re-adopt Chapter 61, as revised by the proposed amendments, concerning Terms and Phrases, as detailed in Exhibit A of this agenda item;
2. Re-adopt Chapter 63, as revised by the proposed amendments, concerning the ERS Board of Trustees, as detailed in Exhibit B of this agenda item;
3. Re-adopt Chapter 65, as revised by the proposed amendments, concerning the ERS Executive Director, as detailed in Exhibit C of this agenda item.

A proposed motion is included at the top of this agenda item for consideration.

ATTACHMENTS:

1. Exhibit A – Proposed Amendments to TAC 61
2. Exhibit B – Proposed Amendments to TAC 63
3. Exhibit C – Proposed Amendments to TAC 65
4. Slides – Re-adoption of Rules Chapters 61, 63 and 65