

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 63, concerning Board of Trustees, by amending §63.1 (Duties of the Board of Trustees), §63.3 (Election of Trustees (Nomination Process)), §63.4 (Election of Trustees (Ballot)), §63.5 (Rulemaking Procedure), §63.7 (Public Comment to the Board of Trustees), §63.9 (Officers), §63.13 (Committees), §63.15 (Roberts Rules of Order), §63.17 (Advisory Committees), and §63.19 (Standard of Conduct for Financial Advisors and Service Providers).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Tex. Admin. Code, §§61.1 *et seq.*

Amendments are proposed for §§63.1, 63.3, 63.4, 63.5, 63.7, 63.9, 63.13, 63.15, 63.17, and 63.19 in order to implement statutory requirements pursuant to HB 917 of the 87th Regular Legislative Session, clarify the intent of the rules and their interaction with other rules and statutes, and enhance public understanding.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rules will be in effect:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation of new employee positions or eliminate existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the agency;
- (5) the proposed amendments will not create a new rule or regulation;
- (6) the proposed amendments will not expand, limit, or repeal an existing rule or regulation;
- (7) the proposed amendments will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the proposed amendments will not positively or adversely affect the state's economy.

Mr. Keith Yawn, Director of Strategic Initiatives, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments to the rules reflect clarifications of the intent of the rules and their interaction with other rules and statutes and implement statutory requirements pursuant to

HB 917 of the 87th Regular Legislative Session. The proposed amendments do not constitute a taking. Mr. Yawn has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and the proposed amendments do not impose a cost on regulated persons.

Mr. Yawn also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules would be to clarify public understanding of the agency's administration of the rules.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, Acting General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at *Cynthia.Hamilton@ers.texas.gov*. The deadline for receiving comments is Monday, November 22, 2021 at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments.

<rule>

§63.1. Duties of the Board of Trustees.

The Board of Trustees shall formulate [the basic and general] policies[,], and rules[, and regulations] consistent with the [purposes, policies, principles, and standards stated in] statutes that govern ERS [administered by the board]. [The board has appellate jurisdiction of appeals from adverse determinations made by the executive director as provided in Chapter 67, Hearings on Disputed Claims.]

§63.3. Election of Trustees (Nomination Process).

A member or retiree of the system who meets statutory eligibility criteria may be nominated to serve as a trustee of the system [Names may be placed in nomination for the office of trustee of the Employees Retirement System of Texas (system)] in the following manner: [.]

(1) A member or retiree [candidate, or his or her agency,] must file a petition on a form approved by the system [requesting the candidate's name to be placed in nomination]. The petition must be signed by 300 or more persons qualified to vote in the trustee election. Only members of the system and retirees are qualified to vote in the election. The system will accept up to 600 signatures from each candidate.

(2) Each [The] signature [of each person] on a petition must be accompanied by that

person's printed or typed name, ZIP Code, and any other information requested by the system to confirm the signer's identity. No person may sign a petition for more than one candidate. To do so will cause the signatures of the person to be disqualified on all petitions.

[(3) Blank petition forms may be reproduced and utilized provided the reproduction is an exact replica of the original document.]

(3)[(4)] The system must receive signed petitions before the deadline established by the board. A copy of a signed paper petition will not be accepted in lieu of the original signed petition. Electronic petitions must be completed and submitted in accordance with the instructions provided with electronic petition forms.

[(5) Only those names of candidates whose petitions comply with this section will be presented on the ballot.]

(4)[(6)] The board shall establish deadlines and other dates related to trustee elections. Blank petitions shall be made available by the system at least 25 calendar days in advance of the deadline established by the board for filing signed petitions.

(5) A member may not be nominated to serve as a trustee if:

(A) the member is employed by the same employer as another trustee whose term will continue following the election; or

(B) the member is currently employed by the system or has been employed by the system within six years prior to the date of nomination.

(6) A retiree may not be nominated to serve as a trustee if:

(A) the board includes another retiree whose term will continue following the election;
or

(B) the retiree was an employee of the system within six years prior to the date of nomination.

§63.4. Election of Trustees (Ballot).

(a) The order of the names on the ballot shall [will] be established [set] by drawing at a time and setting determined by the system. Each candidate or the candidate's representative may attend the drawing. [All nominated candidates or their representatives are entitled to be present at the drawing. The time and location of the drawing will be set by the system.]

(b) Each candidate [All candidates] must submit [within] the [time frame established by the system any] information requested by the system for presentation on the ballot. Such information may include[, but is not limited to]:

(1) name as it is to appear on the ballot;

(2) current [classification/exempt] title and position as a state employee;
(3) name and address of [current] employing state agency; and
(4) any other information the system determines may be helpful to the electorate [persons qualified to vote in the election].

(c) In addition to the information described [required] in subsection (b) of this section, each [the] candidate must [shall] provide[, within the time frame provided by the system, his or her state agency mailing address,] a statement of qualifications, a description of the candidate's [and] position on system-related issues [consisting of] (250 words or less), and any [such] additional information requested by [as] the system [may request]. This information shall [, in addition to that which will appear on an election ballot, will] be made available to the electorate through a special election [system] newsletter devoted to the [trustee] election process. This special edition of the newsletter [will be made available to the electorate at the beginning of each election and] will describe restrictions on the use of state funds to influence the outcome of any election.

(d) The system may contract with an election administrator to implement and monitor the election process. Balloting may be conducted electronically or in combination with a printed ballot.

(e) The system or the [/] election administrator shall [will, at least 25 days in advance of the close of each election established by the election calendar,] make ballots available to eligible voters. Upon the request of a [the] candidate, the system or the [/] election administrator shall [will] provide the candidate with 500 ballots without preprinted names [to each candidate].

(f) The system[/] or the election administrator shall [will] provide a 24-hour toll-free telephone number that [line which] eligible voters may use to request a printed ballot.

(g) Electronic ballots must be completed and submitted to the system or the [/] election administrator in accordance with the instructions provided with each ballot [contained in the electronic voting format].

[(h) Each candidate may designate one (1) person to observe the ballot counting process. No observer will be permitted to see complete ballots which indicate the identity of a voter and voter's candidate selection. No observer will be permitted to challenge the validity of ballots or disrupt the counting process in any way.]

(h)[(i)] The system or the [/] election administrator shall [will] disqualify any ballot that does [ballots which do] not meet the requirements [and instructions] specified in the instructions provided with [the electronic format or printed on] the ballot.

(i)[(j)] The board or the board's designee shall certify election results. If only one candidate

is eligible to be presented on the ballot, the board or the board's designee may certify the candidate without an election.

§63.5. Rulemaking Procedure.

(a) Initiation method. The [proceedings for the] promulgation, adoption, repeal, or revision of any rule [rules] may be initiated by the executive director or any member of the board [Board of Trustees].

(b) Petitions. Any interested person may petition [to] the executive director or the board to request [Board of Trustees requesting] the adoption of a rule. Within 60 days after [of] the receipt of a [the] petition, the executive director shall [will] either initiate rulemaking proceedings or place the matter on the agenda of the next regularly scheduled board meeting for discussion.

§63.7. Public Comment to the Board of Trustees.

A member [Members] of the public who wishes [wish] to make a presentation to the board [Board of Trustees] regarding an item [items] on the board's agenda may do so in accordance with the following [rules and] procedures: [.]

(1) A form approved by the system must be completed and submitted to the system prior to the board meeting in the time and manner specified. [Immediately preceding the board meeting, a form furnished by the board shall be completed, indicating the agenda item or items to be addressed.]

(2) Only the parties involved in an appeal may comment on administrative appeals that are presented to the board. [Comments regarding agenda items relating to administrative appeals to the board are limited only to parties involved in those appeals or their legal representatives.]

(3) The [Comments from the public regarding agenda items will be heard by the] board shall hear comments regarding an agenda item at the time the agenda item is under consideration [and before a final decision is made].

(4) Comments by an individual on a particular agenda item shall be limited to five minutes[.], unless the chair modifies the amount of time allotted [modified at the discretion of the chairman of the Board of Trustees].

(5) The combined maximum amount of time for all public comments regarding [for] an agenda item is 30 minutes[.], unless the chair modifies the amount of time allotted [modified at the discretion of the chairman of the Board of Trustees].

(6) Members of the public are encouraged to submit written comments to the board in

lieu [place] of [,] or in addition to [,] oral comments [presentations].

§63.9. Officers.

At the last regularly scheduled board meeting each year, the board shall elect a chair and vice chair who shall take office the following September 1. The chair or vice chair, in the chair's absence, shall preside at meetings of the board. [The members of the Board of Trustees shall elect a chairman and vice chairman for each fiscal year. The officers shall be elected at the last scheduled regular board meeting of a fiscal year and shall take office the following September 1. The chairman of the board or the vice chairman, in the chairman's absence, will preside at the meetings of the board. While presiding, the chairman will direct the order of the meeting, recognize persons to be heard, limit time, take other action to clarify issues, and preserve order.]

§63.13. Committees.

The internal audit committee shall be considered a standing committee, and members shall be appointed by the chair [chairman] at the beginning of each [fiscal] year. The chair [chairman] shall designate additional ad hoc committees as [are] necessary [to consider various aspects of the board's work]. The term of an ad hoc committee shall be for the [fiscal] year in which the ad hoc committee is appointed or until the work of the ad hoc committee is completed if within the [fiscal] year.

§63.15. Robert's [Roberts] Rules of Order.

Unless otherwise required [otherwise] by law or these rules, Robert's [Roberts] Rules of Order may [shall] be used in the conduct of business by the board to the extent practicable.

§63.17. Advisory Committees.

(a) The composition and functions of the Medical Board [(Government Code, §815.204) is created pursuant to law. This committee will be composed of the number of people directed by law and will have the purposes, tasks, and reporting requirements] are established by statute [law]. Remuneration, if any, for Medical Board [committee] members shall [will] be determined by the board. The Medical Board shall [committee will] perform its tasks until abolished by the legislature.

(b) The Investment Advisory Committee (IAC) shall [is created to consult with and] advise the board on issues related to investments [and investment related issues]. Subject to

applicable statutory requirements, the board shall determine the [The] number of IAC members [on-the IAC], the prerequisites for membership, the reporting requirements for the IAC, whether to abolish the IAC, and the remuneration, if any, for IAC members [and its reporting requirements will be determined by the board. The IAC will perform its tasks until abolished by the board].

(c) The Group Benefits Advisory Committee (GBAC) shall [is created to] advise the board on employee benefits administered by the board as part of [within] the Texas Employees Group Benefits Program. The board shall determine the number of GBAC members [on the GBAC], the prerequisites for membership, the reporting requirements for the GBAC, whether to abolish the GBAC, and the remuneration, if any, for GBAC members [and its reporting requirements will be determined by the board. The GBAC will perform its tasks until abolished by the board].

§63.19. Standards [Standard] of Conduct for Financial Advisors and Service Providers.

In accordance with Tex. Gov't Code §2263.004, any financial advisor or [advisors and] service provider [providers ("Financial Advisors")] who receives [receive], directly or indirectly, more than \$10,000.00 in compensation from the system [System] during a [fiscal] year[,] and provides [who provide] financial services to the system, the board, or a member of the board [System, the System's Board-of Trustees, or the individual members of the Board of Trustees] regarding the management or investment of the system's [System's] funds[,] shall comply with all applicable standards of conduct established by [with which they are required to comply in accordance with] federal and [or] state laws and regulations, relevant trade and professional associations, and the system's [System's] Investment Policy. The system may terminate any business relationship, including the termination of a contract, for failure to comply with an applicable standard of conduct as required by this section. [Financial Advisors must agree to comply with these standards of conduct as a prerequisite to establishing and continuing any business relationship with the System. Failure to comply with applicable standards of conduct authorizes the System to terminate any business or contractual relationship at the System's discretion.]