

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 65, concerning the Executive Director, by amending §65.1 (Duties of the Executive Director), §65.5 (Correction of Administrative Error), §65.7 (Appointment of Examiner), §65.9 (Delegation of Authority), §65.11 (Reimbursement for Training or Education), and §65.13 (Enhanced Contract Monitoring).

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 §§65.1, 65.5, 65.7, 65.9, 65.11, and 65.13 in order to 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 as well as an enhanced public understanding of the rules. 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>

§65.1. Duties of the Executive Director.

All the administrative and decisional powers granted by the statutes that govern ERS [administered by the board] are vested in the executive director, subject to [the basic and general] policies[,] and rules formulated by the board. [and regulations, and appellate jurisdiction of the board.]

§65.5. Correction of Administrative Error.

The executive director may take [such] action [that is] necessary to correct an administrative error [and the effects thereof]. The reason for any [An] action by the executive director to correct an administrative error [made pursuant to this section and the reasons for such action] shall be made [a] part of the appropriate record.

§65.7. Appointment of Examiner.

The executive director shall have authority to appoint an examiner to conduct proceedings related to contested cases under [provided by] the Administrative Procedure Act [(Tex. Gov't Code Ann. §§2001.001 et seq.)].

§65.9. Delegation of Authority.

Any right, power, or duty [imposed or] conferred on the executive director by statute, [law or by] rule, or board action may be exercised or performed by the deputy executive director as

provided by Tex. Gov't Code §815.202(f) or if the executive director is incapacitated or otherwise unable to act.

§65.11. Reimbursement for Training or Education.

Before an employee of the system may be reimbursed under Tex. Gov't Code §656.047(b)[, Texas Government Code,] the executive director must authorize the tuition reimbursement payment based on compliance with the requirements of §656.047(b)[,] and [as consistent with] applicable laws governing the trusts administered by the system [ERS].

§65.13. Enhanced Contract Monitoring.

(a) Contracts described by Tex. Gov't Code §2261.251(b)[, Texas Government Code,] are subject to the system's enhanced contract and performance monitoring procedures.

(b) The executive director shall designate [a] staff [member(s)] who will be responsible for submitting the information on contracts described by Tex. Gov't Code §2261.251(b)[, Texas Government Code,] to the board [of trustees].