

December 2023

# GUIDING PRINCIPLES

## Policy Committee Meeting



TEACHER RETIREMENT SYSTEM OF TEXAS

**Teacher Retirement System of  
Texas**

1000 Red River Street  
Austin, Texas  
78701-2698

**TEACHER RETIREMENT SYSTEM OF TEXAS MEETING  
BOARD OF TRUSTEES  
AND  
POLICY COMMITTEE**

*(Committee Chair and Members: Mr. Elliott, Chair;  
Ms. Allred, Mr. Hollingsworth, Mr. Nance and Mr. Walls, Jr.)*

*All or part of the December 7, 2023, meeting of the TRS Policy Committee and Board of Trustees may be held by telephone or video conference call as authorized under Sections 551.130 and 551.127 of the Texas Government Code. The Board intends to have a quorum and the presiding officer of the meeting physically present at the following location, which will be open to the public during the open portions of the meeting: **1000 Red River, Austin, Texas 78701 in the TRS East Building, 5<sup>th</sup> Floor, Boardroom.***

*The open portions of the December 7, 2023, meeting are being broadcast over the Internet. Access to the Internet broadcast and agenda materials of the meeting is provided at [www.trs.texas.gov](http://www.trs.texas.gov). A recording of the meeting will be available at [www.trs.texas.gov](http://www.trs.texas.gov).*

**AGENDA**

**December 7, 2023 – 10:00 a.m.**

1. Call roll of Committee members.
2. Consider the approval of the proposed minutes of the September 2023 committee meeting – Chair John Elliott.
3. Review and consider recommending to the Board proposed amendments to the Bylaws of the Board of Trustees – Heather Traeger.
4. Review and consider recommending to the Board proposed amendments to the Designation of Key Employees Policy – Heather Traeger and Elena Barreiro.
5. Consider recommending to the Board adoption of the following proposed amendments to the TRS Rules in Chapter 31 of Title 34, Part 3 of the Texas Administrative Code – Heather Traeger and Nick Gonzalez:
  - A. §31.5 Notice and Forfeiture Requirements for Certain Service Retirees
  - B. §31.6 Second EAR Warning Payments
6. Consider authorizing for publication in the Texas Register notice of the following proposed repeal and new rule in TRS Rules Chapter 51 of Title 34, Part 3 of the Texas Administrative Code – Heather Traeger and Ronnie Bounds:
  - A. [REPEAL] §51.2 Vendor Protests, Dispute Resolution, and Hearing

NOTE: The Board of Trustees (Board) of the Teacher Retirement System of Texas will not consider or act upon any item before the Policy Committee (Committee) at this meeting of the Committee. This meeting is not a regular meeting of the Board. However, because the full Policy Committee constitutes a quorum of the Board, the meeting of the Committee is also being posted as a meeting of the Board out of an abundance of caution.

B. [NEW] §51.2 Vendor Protests and Appeals

**Minutes of the Policy Committee  
September 14, 2023**

The Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas met on Thursday, September 14, 2023, in the boardroom located on the Fifth Floor in the East Building of TRS' offices located at 1000 Red River Street, Austin, Texas, 78701.

**Committee members present:**

Mr. John Elliott, Chair  
Ms. Brittny Allred  
Mr. Jarvis V. Hollingsworth  
Mr. James D. Nance  
Mr. Robert H. Walls, Jr.

**Other TRS Board Members present:**

Mr. Michael Ball  
Mr. David Corpus  
Ms. Nanette Sissney  
Mr. Elvis Williams

**Others present:**

Brian Guthrie, TRS  
Andrew Roth, TRS  
Heather Traeger, TRS  
Jase Auby, TRS  
Amanda Jenami, TRS  
Don Green, TRS  
Barbie Pearson, TRS  
Katrina Daniel, TRS  
Katy Hoffman, TRS  
Caasi Lamb, TRS  
Katherine Farrell, TRS  
Steve Voss, AON  
Dr. Keith Brown, Investment Advisor  
Joe Newton, GRS  
Suzanne Dugan, Cohen Milstein

Policy Committee Chair, Mr. John Elliott, called the meeting to order at 2:00 p.m.

**1. Call roll of Committee members.**

Ms. Farrell called the roll. A quorum was present.

**2. Consider the approval of the proposed minutes of the July 2023, Policy Committee meeting – Chair John Elliott.**

On a motion by Mr. Nance, seconded by Mr. Hollingsworth, the committee unanimously approved the proposed minutes for the July 2023 Policy Committee meeting as presented.

**3. Consider recommending to the Board adoption of the proposed amendments to the Investment Policy Statement – Katy Hoffman and Brad Gilbert.**

Ms. Katy Hoffman stated the proposed modifications were reviewed during the July Investment Management Committee. She stated there have been no modifications since the changes discussed in July. She said additional documentation was provided, one being a memo for the over-the-counter derivative process controls and procedures. Mr. Mike McCormick weighed in stating support for the proposed changes. He said the ability to trade over-the-counter securities between teams was noteworthy but he was comfortable with the procedures in place. Dr. Keith Brown and Ms. Suzanne Dugan echoed the comments.

On a motion by Mr. Hollingsworth, seconded by Mr. Nance, the Committee unanimously voted to recommend to the Board the approval of the proposed amendments to the Investment Policy Statement, as presented by staff.

**4. Consider recommending to the Board adoption of the proposed amendments to the General Authority Resolution – Heather Traeger and Elena Barreiro.**

Ms. Elena Barreiro reviewed the three recommended modifications to the General Authority Resolution (GAR). She said the first was to add the assistant deputy director's title to the Executive group, the second was to expand the Chief Compliance Officer to a group, adding two additional senior Compliance titles, and third was to create a group for Investment Operations.

On a motion by Mr. Hollingsworth, seconded by Ms. Allred, the committee unanimously voted to recommend to the Board the proposed amendments to the General Authority Resolution, as presented by staff.

**5. Review and consider recommending to the Board the adoption of the proposed amendments to the Employment at Will Policy – Shunne Powell.**

Ms. Shunne Powell noted the Employment at Will Policy was to be reviewed in accordance with the policy review schedule. She said staff had no substantive changes but needed to update the policy to conform with current TRS policy formatting and to remove citation to policies that no longer exist.

On a motion by Mr. Hollingsworth, seconded by Mr. Walls, the committee unanimously voted to recommend to the Board adoption of the proposed amendments to the Employment at Will Policy, as presented by staff.

**6. Consider recommending to the Board the adoption of the proposed new TRS rule, relating to the Special Transitional Plan, in Subchapter C of Chapter 41 of Title 34, Part 3 of the Texas Administrative Code - Heather Traeger, Katrina Daniel and Roberto Cortes-Moreno:**

**A. [NEW] § 41.53 Special Transitional Plan**

Ms. Heather Traeger referenced the overview provided by Mr. Brian Guthrie in his Executive Director's Report to the Board that morning. Mr. Roberto Cortes-Moreno reviewed how TRS-ActiveCare has a plan year that runs from September 1 to August 31 of each year. He noted the law requires all participating entities that want to come into ActiveCare to apply no later than December 31 to begin the next September 1. However, he said, some entities may have a plan year that runs on a different calendar, for example from January 1 to December 31. For these entities to enter ActiveCare, they would have to terminate their plan early, which may be a very costly burden for some entities. He said the proposed rule creates a plan that would allow these entities to opt for a special transitional plan to be issued from the end of their plan year until the ActiveCare plan year begins on September 1. He said the proposed plan is designed for entities that have a plan year that ends on any other date that is not August 31. He said the proposal requires the entity to file preliminary information of their underwriting 180 days before in order for TRS to quote them what the rates would look like if the entity opts for the special transitional plan. He said the transitional plan would be similar to the regular ActiveCare plan in that the same benefits, eligibility, appeals and expulsion procedures that apply to ActiveCare except for any fully insured HMO plan.

Mr. Cortes-Moreno noted the rule was already published on August 11th under Mr. Guthrie's authority due to urgency of timing, and no comments were received.

On a motion by Mr. Nance, seconded by Mr. Hollingsworth, the committee unanimously voted to recommend to the Board approval of the proposed new TRS rule relating to special transitional plans, as presented by staff.

- 7. Consider recommending to the Board adoption of the proposed repeal of the following TRS rules in Chapter 41 of Title 34, Part 3 of the Texas Administrative Code – Heather Traeger and Roberto Cortes-Moreno.**
  - A. §41.15 Requirements to Bid on Group Long-Term Care Insurance Under Chapter 1576 of the Insurance Code**
  - B. §41.16 Coverage Offered Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program**
  - C. §41.17 Definitions**
  - D. §41.18 Eligibility for the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program**
  - E. §41.19 Initial Enrollment Periods for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program**
  - F. §41.20 Effective Date of Coverage Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program**

Mr. Cortes-Moreno reviewed how TRS no longer offers long-term care insurance because no carrier is willing to issue such coverage. He said staff's recommendation is to repeal these rules pertaining to the long-term care insurance program.

On a motion by Mr. Hollingsworth, seconded by Mr. Walls, the committee unanimously voted to recommend to the Board the proposed repeal of the TRS rules in Chapter 41, as presented by staff.

**8. Consider authorizing for publication in the Texas Register notice of the following proposed amendments to the TRS rules in Chapter 31 of Title 34, Part 3 of the Texas Administrative Code – Heather Traeger and Nick Gonzalez:**

**A. §31.5 Notice and Forfeiture Requirements for Certain Service Retirees**

**B. §31.6 Second EAR Warning Payments**

Mr. Nick Gonzalez reviewed how the legislature in 2021 revamped the employment after retirement process and TRS repealed all 16 existing rules and adopted 18 new ones that became effective as of November 1, 2021. Subsequently, he said, two issues were discovered with the rules, particularly 31.5 and 31.6 relating to the three strikes process. He reviewed the process and noted the way the rule is currently written had the new level of forfeiture began when notice letter was received rather than issued. He said the notice being received creates an ambiguity. The proposed change is to have the period begin when notice issued not when received.

On a motion by Mr. Hollingsworth, seconded by Mr. Walls, the committee voted unanimously to authorize for publication in the Texas Register notice of the proposed amendments to the TRS rules in Chapter 31, as presented by staff.

**9. Consider updates to the Policy Review Schedule – Katherine Farrell.**

Ms. Katherine Farrell provided an overview of the Policy Review Schedule, how it sets the roadmap as to the business of the committee and ensures all policies are reviewed in a timely fashion. She noted no substantive changes were proposed by staff. She said the proposed non-substantive changes included updating review dates for policies reviewed during the past year and combining the employee ethics policy and the code of ethics contractors with their respective disclosure statements into one row for each policy. She did identify that the proposed changes needed updating for the policy on negotiated rulemaking and alternative resolutions were reviewed in July 2023, which was not reflected in the provided materials. She said those policies will be reviewed in July 2028 and to have the last comprehensive review and last amendment to reflect 2023.

On a motion by Mr. Walls, seconded by Mr. Hollingsworth, the Committee voted unanimously to approve the Policy Review Schedule, as presented by staff.

There being no more business before the Policy Committee, the committee adjourned at 12:15 p.m.

Approved by the Policy Committee of the Board of Trustees of the Teacher Retirement System of Texas on December \_\_, 2023.

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Katherine H. Farrell  
Secretary to the Board of Trustees  
Teacher Retirement Systems of Texas

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Date

**TAB 3**



## Legal & Compliance

# Memorandum

**DATE:** December 7, 2023

**TO:** Policy Committee of the Board of Trustees (“Policy Committee”)

**FROM:** Heather Traeger, General Counsel and Chief Compliance Officer

**COPY:** Brian Guthrie, Executive Director

**RE:** Proposed Amendments to Bylaws of the Board of Trustees

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### Introduction

TRS asks the Policy Committee (“Committee”) to recommend to the Board of Trustees (“Board”) proposed amendments to the Bylaws of the Board of Trustees of TRS (“Bylaws”).

### Background

The current Bylaws of the TRS Board of Trustees provides that the Board is responsible for the selection, job description, assignment of duties, performance evaluation, compensation, and discipline, including dismissal, of the Chief Audit Executive and Ombudsman, each in consultation with the Executive Director.

However, because the Executive Director manages the day-to-day functions of TRS, it is recommended that amendments be made to articles in the Bylaws involving the Board of Trustees’ and the Executive Director’s authority and responsibility related to the Chief Audit Executive and Ombudsman. The amendments will align the Board’s responsibilities for the Chief Audit Executive and Ombudsman with the current Bylaw provisions related to those responsibilities for the Chief Investment Officer. In an effort to provide greater management support, guidance and administrative oversight for the Chief Audit Executive and Ombudsman functions, the amendments will expand the authority of the Executive Director’s role in the administration and operation of the Chief Audit Executive and Ombudsman functions and comport with TRS’ prior reporting structure pertaining to the Chief Audit Executive.

In addition, such joint reporting and oversight is consistent both with best governance practices as well as reporting lines at other peer public pensions.

Staff additionally recommends an amendment to make clear that the Board selects any and all of the Board's consultants it deems necessary to carry out its investment and trust administration responsibilities, whether related to investments, compensation, technology projects, or otherwise. As currently drafted, the Bylaws could be read to limit the Board to selecting investment consultants and other listed consultants such as fiduciary counsel and the actuary.

Finally, a non-substantive amendment is recommended to more accurately reflect the current nomenclature of TRS' Outreach, Culture, and Engagement program for employees.

### **Considerations for the Committee**

TRS Staff recommends the following changes to the Bylaws:

- 1.7(g) – Amendments to align the Board's responsibilities for the Ombudsman with the Board's responsibilities for the Chief Investment Officer;
- 1.7(n) – Amendment to clarify that the Board may select any and all of its consultants;
- 3.1.1(d) – Amendment to make a conforming change to clarify that the Audit, Compliance, and Ethics Committee is responsible for providing advice to the Board in the discipline, including dismissal, of the Chief Audit Executive in consultation with the Executive Director;
- 4.1.2(c) – Amendments to more closely align the Executive Director's role and responsibilities for evaluations, discipline, assignment of duties, and personnel matters related to the Chief Audit Executive and Ombudsman with the role and responsibilities related to the Chief Investment Officer, except as otherwise stated;
- 4.1.2(f) – Amendment to make a conforming change to reflect that the Executive Director or his designee recommends to the Board the selection of any Board consultant;
- 4.1.2(h) – Non-substantive amendment to nomenclature to mirror changes to the TRS Outreach, Culture, and Engagement program.

### **Requested Action**

TRS Staff requests that the Committee recommend that the Board adopt the attached proposed amended Bylaws.

A redlined and clean copy of the proposed amended Bylaws are attached to this memo.



# ATTACHMENT 1

**Bylaws of the  
Board of Trustees of the  
Teacher Retirement System of Texas  
AMENDED September 16,  
2022**

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**Bylaws of the Board of Trustees  
of the  
Teacher Retirement System of Texas  
AMENDED July 16, 2021**

**ARTICLE 1  
Organization of the Board of Trustees**

**1.1 Authority.** The Teacher Retirement System of Texas (“TRS” or the “system”) has been established pursuant to Article 16, Section 67 of the Texas Constitution, which requires TRS to have a Board of Trustees (the “Board”) to administer TRS and invest its funds. The assets of the TRS pension fund are required by state and federal law to be held in trust for the exclusive benefit of plan participants and beneficiaries. (See Texas Constitution, Art. 16, Section 67(a); Texas Government Code Sections 825.506 and 825.101; United States Internal Revenue Code Section 401(a).) The Board of Trustees of TRS is the trustee of all plan assets, is responsible for the general administration and operation of TRS and its subsidiaries and affiliates, and is authorized by law to adopt rules for the administration of TRS and the transaction of the business of the Board. (See Texas Government Code chapter 825.) All powers of trusteeship are held in the Board’s fiduciary capacity. The exercise or non-exercise of the Board’s powers are subject to the fundamental duties of prudence, loyalty, and impartiality (Restatement Third, Trust §§ 77-79); to a duty to respect the terms and purposes of the trust (Restatement Third, Trust § 76); and to other fiduciary duties of trusteeship. Although a trustee’s duties, like trustee powers, may be affected by the terms of the trust, the fiduciary duties of trusteeship are subject to minimum standards that require the trustee to act in good faith and in a manner consistent with the purposes of the trust and the interests of the beneficiaries. These fundamental standards of trusteeship are implicit in and normally essential to the trust relationship. (See Restatement Third, Trust §§ 70 and 86.) The Board has similar responsibilities for the health benefits programs under the Texas Public School Retired Employees Group Benefits Act and the Texas School Employees Uniform Group Health Coverage Act and other trusts or programs authorized by law to be administered by TRS.

**1.2 Composition.** The Board is composed of nine members, who serve for staggered terms of six years each, three of which expire on August 31 of each odd-numbered year. Trustees are appointed in accordance with statutory requirements (Texas Government Code Sections 825.001-.004).

A trustee whose term expires shall continue to perform the duties of the office until his or her successor shall be duly qualified. (Texas Constitution, Art. 16, Section 17; also see Government Code, Section 572.0211). Similarly, a trustee who tenders his or her resignation nonetheless holds over until his or her successor is duly qualified for the office. Limited exceptions may arise, one of which is the removal of an office holder in a quo warranto proceeding (Civ. Prac. & Rem. Code Section 66.001).

### **1.3 Chairman of the Board of Trustees.**

- 1.3.1** The Governor of the State of Texas designates a member of the Board as the presiding officer of the Board. (Texas Government Code Section 825.201.)
- 1.3.2** The chairman shall preside over meetings of the Board and perform such other duties as are assigned by statute, these Bylaws, or other action of the Board.
- 1.3.3** The chairman serves at the pleasure of the Governor.

### **1.4 Vice Chairman of the Board of Trustees.**

- 1.4.1** The Board shall elect a vice chairman who is a member of the Board.
- 1.4.2** In case of the absence, death, resignation, disability, removal, or disqualification of the chairman, the vice chairman shall perform the duties of the chairman until the chairman shall resume his or her office or a successor chairman has been appointed.
- 1.4.3** The vice chairman serves at the pleasure of the Board.

**1.5 Absence of Chairman and Vice Chairman.** In the case of the absence, death, resignation, disability, removal, or disqualification of both the chairman and vice chairman, the member of the Board with the longest service on the Board (considering all Board service), as certified by the executive director, shall exercise the duties of the chairman, as acting chairman, until the chairman or vice chairman shall resume his or her office or until a successor chairman has been appointed or a successor vice chairman has been elected. In the event there are two or more members with equal length of service, the executive director shall designate one of those members to serve as the acting chairman.

### **1.6 Elections.**

- 1.6.1** Elections for vice chairman and any other positions that require election by the Board shall be conducted annually on or before the Board's first regular meeting of the fiscal year or as soon thereafter as may be practicable.
- 1.6.2** When a position subject to Board election becomes vacant, a special election for the position shall be held as soon thereafter as practicable.
- 1.6.3** Subject to the proviso that such persons serve at the pleasure of the Board, persons elected to positions under this section serve for a term that expires with the next election for that position or upon resignation from the position by the person holding it.

**1.6.4** Nominations for the vice chairman of the Board and any other position that requires election by the Board will be made from the floor by Board members at a meeting of the Board or by special committee established for the purpose of making nominations. A Board member may self-nominate for any such position.

**1.6.5** Elections conducted in Board meetings shall be conducted in an open meeting by acclamation or by a roll-call vote pursuant to a motion that has been seconded. Unless a different number is required by law, a majority vote of a quorum is required to elect a nominee for each election required by these Bylaws.

**1.7 Responsibilities of the Board.** Board members are TRS fiduciaries and shall discharge their duties in the exclusive interest of members and annuitants for the purpose of providing authorized benefits to participants and their beneficiaries. The Board is tasked with the general administration and operation of the retirement system. In order for the Board to monitor and evaluate the effectiveness of the system it shall:

- (a) adopt and periodically review the TRS mission in light of the Board's constitutional and statutory authority and set clear goals for its accomplishment;
- (b) adopt rules, regulations, and bylaws as appropriate or required by law;
- (c) establish committees to make recommendations to the Board and help carry out the Board's responsibilities; however, such committees may not exercise authority required under these Bylaws or by state or federal law to be exercised by the Board as a whole, and the Board may consider or take any action otherwise specified to be taken or considered by a committee created pursuant to article 3 of these Bylaws;
- (d) approve the annual operating budgets;
- (e) adopt and periodically review policies for the operation of the system;
- (f) consider appeals as provided in Board rules;
- (g) be responsible for the following positions:
  - (1) selection, job description, assignment of duties, performance evaluation, compensation, and discipline, including dismissal, of the executive director;
    - (aa) provide oversight and direction to the executive director to ensure that effective management practices are followed in the organization;
    - (bb) delegate to the executive director the responsibility for all administrative functions; and
    - (cc) delegate authority to the staff through the executive director;
  - (2) selection, job description, assignment of duties, performance evaluation, compensation, and discipline, including dismissal, of the chief audit executive, in consultation with the Audit, Compliance and Ethics Committee and executive director;
  - (3) selection, ~~job description, assignment of duties,~~ performance evaluation,

- and compensation, ~~and discipline, including dismissal,~~ of the ombudsman, in consultation with the executive director;
- (4) selection, performance evaluation, and ~~establish~~ compensation of the chief investment officer,  
in consultation with the executive director;
- (h) ensure the establishment of a system for equitable and effective hiring, evaluation, compensation, and termination of employees;
- (i) set not-to-exceed amounts in the exempt salary schedule in consultation with the Compensation Committee and executive director; and
- (j) ensure an adequate working environment for staff members;
- (k) receive reports from the staff, investment consultants and advisors, and others regarding the investment portfolio;
- (l) review investment performance, asset mix, portfolio characteristics, cash flow, transactions, and monitor compliance with investment policies and guidelines;
- (m) select one or more commercial banks, depository trust companies or other entities to serve as custodian(s) of TRS securities and to lend such securities, provided that, for avoidance of doubt, this requirement 1) does not apply to regulated brokerage, clearing, exchange, or similar accounts into which TRS is required to deposit assets or collateral and 2); the selected securities lending entity(ies) may act independently of the selected custodian(s)
- (n) select the following consultants and advisors to the Board:
- (1) select and evaluate ~~investment~~ consultants or advisors to provide such expert advice and assistance to the Board as the Board deems necessary to exercise its investment and trust administration responsibilities;
- (2) select and evaluate fiduciary counsel;
- (3) select and evaluate an actuary;
- (o) appoint members to the following:
- (1) the Medical Board; and
- (2) members and officers of the Retirees Advisory Committee.

## **1.8 Board Travel.**

**1.8.1** Members of the Board shall be reimbursed for allowable travel expenses while on official TRS business as specified in state law and the “TRS Travel Rules and Guidelines.”

**1.8.2** Official TRS business is defined as travel while acting as a designated representative of the Board (such as meeting with elected officials or Board consultants and advisors on behalf of the Board whether within or outside the state), travel to and from meetings of the Board, meetings of Board committees, orientation meetings, or other travel within the state in the capacity of a member of the Board.

- 1.8.3** In addition to travel on official TRS business as defined in subsection 1.8.2 of this section, it is anticipated that each Board member will receive reimbursement established through the budget process of allowable Board travel expenses to attend conferences and other activities meeting the following criteria:
- (a) The purpose of the expense is related to the business of TRS and the Board; and
  - (b) Attendance at the function will benefit the Board or a Board member in the exercise of TRS responsibilities.
- 1.8.4** Travel allocations are not compensation, nor are they in the nature of an allowance paid regardless of whether travel expenses are incurred. Any international travel must receive advance approval as required by law.
- 1.8.5** The Executive Director in consultation with the Legal & Compliance Division shall be responsible for developing and administering procedures for travel under sections 1.8.2 and 1.8.3.

**1.9 Board Education.** Each Board member is encouraged to attend workshops and training sessions on such matters as fiduciary duties, actuarial valuations, investment issues, and benefits delivery, which may enable the Board member to better fulfill trustee responsibilities to the system.

## **ARTICLE 2**

### **Meetings of the Board**

#### **2.1 Meetings of the Board.**

- 2.1.1** The Board shall meet approximately five, but at least four, times per fiscal year. The dates for regular meetings will be approved annually in advance by the Board at the first regular meeting of each fiscal year or as soon thereafter as practicable. When necessary, and in addition to the provisions of subsection 2.1.6 of this article, the Board may add or cancel a regular meeting or change the date, time, or location of a regular meeting by action of the Board.
- 2.1.2** Special meetings of the Board may be held either upon the call of the chairman of the Board or the call of at least four members of the Board, or upon action of the Board. A call by the chairman or by other members of the Board must be communicated to the executive director within sufficient time to permit posting of the meeting as required by law. The call or action of the Board, as applicable, shall specify the date of each special meeting and may specify the time and place for each special meeting.
- 2.1.3** Meetings shall be held at TRS headquarters, in Austin, Texas, unless by call or action of the Board another location is specified.

**2.1.4** Regular and special meetings shall begin at a time designated by the chairman of the Board unless a time has been specified in the call or by action of the Board in setting a particular meeting.

**2.1.5** Emergency meetings may be called in the same manner as special meetings. The Board member who initiates the call for an emergency meeting shall provide the executive director with the reason for the emergency or urgent public necessity. An emergency meeting is one which cannot be posted within the seven day advance notice normally required by the Open Meetings Act (Texas Government Code Chapter 551, Section 551.044, or a successor statute) (the “Act”), but which is needed because of “imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the government body” or as otherwise defined by the Act, as amended, court decision, or other applicable law. Emergency meetings shall be posted in accordance with applicable law, including Texas Government Code Section 551.045 (or its successor statute), requiring posting for at least two hours before the meeting is convened.

**2.1.6** If a catastrophe prevents the Board from convening a properly posted meeting, the Board may, under Texas Government Code Section 551.0411, convene in a convenient location within 72 hours pursuant to Texas Government Code Section 551.045 by giving written notice of the date, hour, place, and agenda of the rescheduled and/or relocated meeting at least two hours before it begins. For the purposes of this subsection, the term “catastrophe” has the meaning assigned in Texas Government Code Section 551.0411. In consultation with the executive director, the chairman of the Board shall specify the date, hour, and place of a meeting rescheduled under this subsection to accommodate as many members of the public, board, and staff as possible.

**2.1.7** In addition to the provisions of subsection 2.1.6 of this article, a special or emergency meeting of the Board may be canceled or rescheduled, or the location of the meeting changed, only by action of the Board or by a call of at least four members of the Board communicated to the executive director within sufficient time for TRS to comply with all posting requirements for the meeting. Unless a time has been specified in the call or action of the Board rescheduling the meeting, the chairman may set the time of a rescheduled meeting, though any such time must meet all posting requirements of applicable law.

## **2.2 Public Comment at Meetings.**

**2.2.1** The Board will allow reasonable opportunity for public comment to the Board on any issue under the jurisdiction of the Board. The chairman may determine the total time to allot to public comments at a meeting of the Board.

**2.2.2** Persons who desire to deliver oral comments at a Board meeting must complete the required sign-in form, preferably before the public comment

agenda item is reached during the Board meeting. Persons who desire to provide oral comments virtually at a Board meeting must complete the required electronic sign-in form preferably by 5:00 pm the day before public comment is scheduled. The chairman of the meeting will specify the length of time to be allowed for each person to speak. Persons wishing to speak before the Board shall provide the following information:

- (a) name and contact information;
- (b) the name of the person or group, if any, the speaker is representing;
- (c) the agenda item upon which the person wishes to speak, if any; and
- (d) if the matter does not relate to an agenda item, a brief description of the nature of the matter to be addressed by the speaker.

If the chairman determines based on the information provided that public comment is made for the purpose of soliciting TRS business and the particular solicitation is not specifically identified on the agenda, the chairman may deny the opportunity to deliver the comment.

## **2.3 Meeting Agendas.**

**2.3.1** The agenda for each Board meeting shall be set by the chairman of the Board and when appropriate other Board members in consultation with the executive director. The executive director shall prepare and distribute to the Board the agenda and relevant written materials.

**2.3.2** Items may be submitted for inclusion on the agenda of any Board meeting by any Board member or by the executive director prior to posting. The executive director shall determine the initial order of the agenda items prior to posting. Board members desiring to add an agenda item must submit it to the executive director by 5:00 p.m. not later than the tenth TRS business day before the meeting.

**2.3.3** Agenda items may be added to a posted agenda by the chairman, by the executive director, or by written request of any Board member, provided that the proposed addition is submitted to the executive director in time to post the amendment to the agenda in compliance with the Open Meetings Act. If the item must be added as an emergency agenda item due to insufficient time to post it as a regular item, the request to add the item must include a valid reason for the emergency, as determined by the executive director in consultation with the general counsel.

**2.4 Notice of Meetings.** The executive director will cause meeting notices to be posted in compliance with these Bylaws and the Open Meetings Act.

**2.5 Auxiliary Aids or Services at Meetings.** Persons who do not speak English or persons with disabilities may request auxiliary aids or services to be provided at a meeting, such as language interpreters or interpreters for persons who are deaf or hearing impaired, or readers or large print or Braille texts for persons who are visually impaired. If the request is made to

the executive director with adequate advance notice before the meeting, the executive director shall cause reasonable accommodations to be provided to persons with disabilities to the extent required by law and may exercise discretion to determine any other accommodations to be provided.

## **2.6 Procedure.**

**2.6.1** A quorum of the Board is a majority of the number of members fixed by statute, unless otherwise defined by applicable law. A quorum is required for the board to conduct business. Unless otherwise provided by law, a majority vote of the board (i.e., a majority vote of the members present and voting at a meeting where a quorum is present) is required for action or decision by the Board, and at least a majority of the minimum number of members needed to constitute a quorum must vote in favor of the action or decision for it to be approved by the Board. Abstentions are not counted in determining the outcome of a vote but are counted in determining a quorum. The most recent edition of *Robert's Rules of Order Newly Revised*, when not in conflict with other Board-adopted rules of procedure, these Bylaws, or applicable law, shall be the rules of parliamentary procedure and order for the Board and its committees. The TRS general counsel shall assist and advise the chairman of the Board or of a committee regarding interpretation and application of the rules of parliamentary procedure.

**2.6.2** The minutes of the Board shall contain each subject of discussion and deliberation, all motions, seconds, if any, and the vote, if any, on such motions. Each Board member shall be given an opportunity to record in the minutes his or her vote on a motion and to have included in the minutes the reasons stated in the meeting for his or her vote.

## **ARTICLE 3**

### **Committees**

**3.1 Standing Committees.** In accordance with section 1.7 of these Bylaws, the Board may establish standing committees by amendment of this article. A quorum of a standing committee shall be a majority of the members of the committee. Any committee may convene in joint session with any other committee. The committees shall normally meet on a quarterly basis or at the call of its chairman. Standing committees may perform other activities related to the committees' responsibilities as requested by the Board.

**3.1.1 Audit, Compliance, and Ethics Committee.** The Board shall have an Audit, Compliance, and Ethics Committee. The responsibilities of the Audit, Compliance, and Ethics Committee shall be as follows:

(a) Purpose

(1) To assist the Board in fulfilling its fiduciary oversight responsibilities for

(aa) the financial reporting process;

- (bb) the risk management and internal control system;
  - (cc) the internal audit process;
  - (dd) the external audit process;
  - (ee) the process for monitoring compliance with laws, regulations, and policies, and
  - (ff) reporting and other activities.
- (2) To coordinate and interface with the Board regarding Audit, Compliance, and Ethics Committee activities and other pertinent matters.
- (b) Financial Reporting Process
- (1) Review and understand significant accounting and reporting matters requiring judgment (including those involving complex or unusual transactions), consider recent professional and regulatory pronouncements, and understand the impact of such matters and pronouncements on financial statements.
  - (2) Review with management and the external and internal auditors the results of audits, including any difficulties encountered.
  - (3) Review all significant suggestions for improved financial reporting made by the external financial statement auditor and by the internal auditor.
  - (4) Review the annual financial statements, and consider whether they are complete, consistent with information known to committee members, and reflect appropriate accounting principles.
  - (5) Review with management and the auditors all matters required to be communicated to the committee under generally accepted auditing standards.
- (c) Governance, Risk Management, and Internal Control Activities
- (1) Receive reports on and discuss the internal and external auditors' assessment of the effectiveness of the organization's governance, risk management, and internal control activities, including technology governance and fraud risk prevention activities.
  - (2) Obtain reports from internal and external auditors and compliance staff on significant findings and recommendations relating to governance, risk management, and internal control activities, together with management's response, including receiving reports regarding any violation of portfolio risk management standards as required by the Investment Policy Statement of the Board for (1) any passive violation of prescribed portfolio policy limits as the result of changing market or credit conditions, and (2) any active violation of prescribed portfolio policy limits as a result of entering into an agreement or investment that breaches a policy limit at inception and the corrective action plan implemented to cure such violation.
- (d) Internal Audit Process

- (1) Assure and maintain, through the organizational structure and by other means, the independence of the internal audit process. Ensure there are no unjustified restrictions or limitations on the internal audit function.
  - (2) Ensure that internal auditors have access to all documents, information and systems in the organization that are reasonably needed to accomplish the purpose of the audit, unless any such information is subject to a legally applicable and properly asserted privilege.
  - (3) Review with management and the chief audit executive the charter, plans, activities, budget, staffing, qualifications and organizational structure of the internal audit function. Recommend to the Board an internal audit charter or modifications to such charter.
  - (4) Review and recommend audit plans for approval by the Board.
  - (5) Review all internal audit reports and management letters.
  - (6) Review the responsiveness and timeliness of management's follow-up actions pertaining to any reported audit recommendations.
  - (7) Receive periodic reports of advisory and consulting activities by internal auditors.
  - (8) Authorize audits or investigations into any matters within the committee's scope of responsibilities and provide appropriate reports to the Board.
  - (9) Provide input and advice to the Board in the appointment, replacement, discipline, including dismissal, and the annual evaluation of the performance and compensation of the chief audit executive in consultation with the executive director.
  - (10) Review the effectiveness of the internal audit function, including compliance with the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing* and Texas Government Code Chapter 2102 (the Texas Internal Auditing Act).
  - (11) Designate the chief audit executive as the primary point of contact for handling audit-related matters pertaining to audits, examinations, investigations or inquiries of the State Auditor's Office, other appropriate state or federal agencies, and other external audit groups.
- (e) External Audit Process
- (1) Review the external auditors' proposed audit scope and approach, including coordination of audit effort with internal audit.
  - (2) Review the performance of the external auditors, and, upon request, recommend to the Board the appointment or discharge of the external auditors. Obtain input from management, the chief audit executive, and other parties as appropriate.

- (3) Review the independence of the external auditors by obtaining statements from the auditors on relationships between the auditors and the organization, including any non-audit services, and discussing the relationship with the auditors.
  - (4) Review the audited financial statements, associated management letters, attestations on the effectiveness of the internal control structure and procedures for financial reporting, and required communications.
  - (5) Review all external audit reports and management letters.
  - (6) Review the responsiveness and timeliness of management's follow-up actions pertaining to any reported audit recommendations.
- (f) Compliance Process
- (1) Access the effectiveness of the system for monitoring compliance with laws, regulations and policies, and the results of management's follow-up actions pertaining to any reported instances of non-compliance.
  - (2) Review the findings and recommendations of any examinations by oversight agencies and compliance and auditor observations.  
Obtain regular updates and reports from the chief compliance officer and, as appropriate, management regarding compliance matters.
- (g) Ethics Process
- (1) Recommend, as deemed advisable, reports regarding conflict of interest disclosures from the chief compliance officer or reports that are submitted directly to the chairman of the committee as prescribed in an applicable ethics policy;
  - (2) Recommend to the Board waivers of any disclosed conflict of interest or a waiver of the prohibition against involvement in any matter affected by a disclosed conflict of interest, at a meeting held in compliance with the Open Meetings Act;
  - (3) Recommend to the Board or the executive director the prudence of contracting on behalf of TRS with any entity or a controlled affiliate of such entity that employs or is represented by a former trustee or former employee;
  - (4) Recommend, as deemed advisable, reports from the executive director of any approval given for outside employment by key employees, including the nature of the employment;
  - (5) Recommend to the Board approval in advance of any outside employment by the executive director;
  - (6) Recommend, as deemed advisable, reports from the executive director of any disciplinary action disclosed by key employees; and
  - (7) Recommend, as deemed advisable, reports of violations of a TRS ethics policy and any resulting disciplinary actions.

- (h) Reporting and Other Activities
  - (1) At least quarterly, report to the Board about committee activities, issues, and related recommendations.
  - (2) Provide an open avenue of communication among management, internal audit, external auditors, compliance, and the Board.

**3.1.2 Benefits Committee.** The Board shall have a Benefits Committee. The purpose of the committee is to assist the Board in carrying out its responsibility for delivery of benefits under programs administered by TRS. The Benefits Committee shall:

- (a) review and make recommendations to the Board related to programs within its oversight;
- (b) receive recommendations from the Retirees Advisory Committee regarding TRS-Care, and recommend related actions to the Board;
- (c) recommend to the Board persons to serve on the Retirees Advisory Committee;
- (d) establish performance standards for professional benefits consultants and participate in performance evaluations of those consultants;
- (e) recommend to the Board persons to serve on the Medical Board;
- (f) review periodic reports by TRS staff or consultants on benefit delivery services, benefit-related trends, and other significant benefit topics; and
- (g) receive reports and make recommendations regarding customer service standards and satisfaction;
- (h) the chair of the committee serves as the point of contact for the ombudsman, in consultation with the executive director, regarding member issues that occur in between committee meetings; and
- (i) provide input and advice to the Board in the appointment, replacement, dismissal and the annual evaluation of the performance and compensation of the ombudsman in consultation with the executive director.

**3.1.3 Budget Committee.** The Board shall have a Budget Committee. The purpose of the committee is to assist the Board in carrying out its fiduciary responsibility for budgeting and accounting for all expenses of the systems' funds. The Budget Committee shall:

- (a) recommend to the Board annual operating budgets;
- (b) recommend intra-budget transfers and budget amendments for approval by the Board; and
- (c) monitor implementation of the operating budgets of the pension trust and other programs.

**3.1.4 Investment Management Committee.** The Board shall have an Investment

Management Committee. The purpose of the Committee is to assist the Board in carrying out its responsibilities to invest and reinvest the system's assets. The Investment Management Committee shall:

- (a) recommend individual investments and investment- related action to the Board when the recommendation is required by the Board's Investment Policy Statement or resolutions adopted by the Board;
- (b) recommend to the Board overarching strategies for all TRS investments, and to monitor those strategies;
- (c) recommend to the Board or an applicable committee investment objectives, the establishment of performance and risk measurement and attribution standards for plan assets, each asset class and component portfolios, and risk parameters and controls, and to monitor those that the Board approves;
- (d) monitor the retirement system's investment processes and consider recommending to the Board or an applicable committee proposed changes to the system's investment processes;
- (e) monitor the investment performance of the overall fund, receive investment reports, and recommend to the Board or an applicable committee policies for appropriate reporting and communication mechanisms to keep the committee and the Board appropriately informed about TRS investments;
- (f) receive reports from staff regarding compliance with portfolio risk management standards as required by the Investment Policy Statement of the Board;
- (g) recommend to the Board approval of action plans submitted by staff to cure passive violations of prescribed policy limits when it is necessary to extend the cure period beyond the time allowed by policy for staff to cure such violation;
- (h) review proposed new or amended investment policies and make recommendations relating to any investment policy, including reporting and communication requirements, to the Policy Committee
- (i) recommend to the Board or the staff, as applicable, that TRS engage professional independent service providers, advisors, or consultants to review internal investment operations and render advice as appropriate. The committee may review responsive proposals and recommend engagement of one or more firms to the Board or the staff, as applicable; and

**3.1.5 Policy Committee.** The Board shall have a Policy Committee. The purpose of the Policy Committee is to assist the Board in fulfilling its policy-making responsibilities, in accordance with Texas Government Code Sections 825.102 and 825.113. The Policy Committee shall:

- (a) make or review policy proposals, including those made by staff through procedures established by the executive director, and recommend new written Board policies and modifications to existing written policies as

needed;

- (b) recommend new rules and rule amendments as needed and review existing rules periodically as required by law;
- (c) adopt and follow a plan of review for each fiscal year to ensure that all written TRS Board policies are reviewed periodically; and
- (d) ensure that proposed Board policies or policy changes have been appropriately reviewed, including by staff pursuant to procedures established by the executive director or by consultants as necessary.

**3.1.6 Strategic Planning Committee.** The Board shall have a Strategic Planning Committee. The purpose of the committee is to assist the Board in its oversight responsibilities relating to strategic planning, including related risks, opportunities, and major projects. The Strategic Planning Committee shall:

- (a) receive reports from staff regarding the development and execution of strategic planning, including regular updates on TRS' medium and long-term initiatives, the TRS Strategic Plan, key performance indicators, and the identification and mitigation of strategic plan risks and vulnerabilities;
- (b) provide input and guidance regarding:
  - (1) assessment of the internal and external forces and variables that impact TRS' strategic planning;
  - (2) formulation and execution of strategic goals and objectives; and
  - (3) alignment of the organization behind the agency's strategic goals and objectives, including alignment with major projects, resource allocation, and the Executive Director's goals and objectives;
- (c) review and make recommendations to the Board on the TRS mission and vision statements and the strategic plan goals and objectives;
- (d) provide enterprise risk oversight by discussing and considering matters relating to the identification, prioritization, management, and monitoring of critical risks;
- (e) receive reports from staff regarding the identification, evaluation, and management of risk across the enterprise;
- (f) receive reports from staff regarding major project development and execution;
- (g) provide input and guidance to TRS staff on the development and execution of major projects;
- (h) make such other recommendations to the Board as the committee deems necessary pertaining to any matters regarding enterprise risk mitigation, tolerance levels, and reduction strategies; and

**3.1.7 Compensation Committee.** The Board shall have a Compensation Committee.

The purpose of the Committee is to assist the Board in its responsibilities to

establish a system for the equitable and effective compensation of employees. The Compensation Committee shall:

- (a) review the Performance Pay Plans and when needed make recommendations concerning it to the Board;
- (b) provide direction to the executive director and make recommendations to the Board on the compensation of TRS staff and other compensation matters referred to the Compensation Committee by the Board chair;
- (c) recommend to the Board adoption of not-to-exceed amounts in the exempt salary schedule in consultation with the executive director; and
- (d) monitor efficiency and effectiveness of the TRS classification system to attract and retain a qualified workforce.

**3.2 Special Committees.** Special committees other than standing committees established in section 3.1 may be created by action of the Board, which shall establish the purpose and responsibilities of the committee and may establish the term for which it shall exist.

**3.3 Composition of Committees.** A committee will be composed of five members of the Board unless otherwise provided by action of the Board or these Bylaws. The chairman of the Board annually shall appoint committee members subject to the consent of the Board on or before the Board's first regular meeting of the fiscal year or as soon thereafter as may be practicable. The chairman of the Board shall designate the chairman of each committee. Committee chairmen serve as chairmen at the pleasure of the chairman of the Board. The term of a committee member expires on the earlier to occur of the date of the Board's consent to the appointment of a successor committee member to fill the member's position or the date on which the member's term as a Board member has expired according to law and the person is no longer holding over and serving as a member of the Board. The chairman of the Board may appoint an interim successor to the committee for a member whose Board term has expired, who is holding over as a Board member, but who has resigned his or her committee position. Any such interim successor member of a committee may serve until the meeting of the Board at which the Board votes to consent to the appointment of committee members.

**3.4 Advisory and Auxiliary Committees.** If authorized or required by state law or Board policy, the Board shall appoint advisory or auxiliary committees of non-board members to assist TRS. These committees may be composed of volunteers, independent contractors, or employees. Such committees include the Medical Board and the Retirees Advisory Committee for TRS-Care. The terms, qualifications, and methods of appointment of these committees shall be governed by relevant state law or Board policy. The Board shall designate the chairman and vice chairman, if any, of each such committee.

**3.5 Committee Agendas.** The agenda for each committee meeting shall be set in a manner similar to a Board meeting agenda, but with the committee chairman and members having

the same authority with regard to the committee agenda of committee meetings that the Board chairman and members have with regard to the Board agenda of Board meetings.

**3.6 Committee Attendance.** Any member of the Board may attend a meeting of a committee of which he or she is not a member but shall not vote. Because the attendance of five or more trustees at a Board committee meeting constitutes a quorum of the full Board, public notice of a committee meeting is also posted as a Board meeting under the Open Meetings Act (Texas Government Code Chapter 551) in anticipation of a quorum of the full Board possibly attending the meeting. Also in compliance with the Open Meetings Act, a record is kept of the attendance of a quorum of the full Board at a Board committee meeting. The attendance of a quorum of the full Board at a Board committee meeting is not a regular, special, or emergency Board meeting under Article 2 of these Bylaws, relating to meetings of the Board. In addition, the attendance of a quorum of the full Board at a Board committee meeting is not a regularly scheduled Board meeting under Texas Government Code Section 825.010(a)(5), relating to grounds for removal of a trustee because of absence from Board meetings.

## **ARTICLE 4**

### **Executive Director**

**4.1 Responsibilities of Executive Director.** The Board shall employ an executive director as required by law, with such duties as may be required by law of the chief executive officer and chief administrative employee of TRS and with such other duties as may be established by the Board in its policies, resolutions, and other actions. In these Bylaws, the term “executive director” means the person appointed by the Board pursuant to Texas Government Code Section 825.202 (or a successor statute) and these Bylaws.

- 4.1.1** With respect to the operations of the Board itself the executive director shall:
- (a) make preparations, including trustee travel arrangements, for all meetings of the Board and its committees;
  - (b) under the direction of the chairman of the Board or a relevant committee, prepare and distribute the agendas and appropriate documentation for all meetings of the Board and its committees;
  - (c) under the direction of the chairman of the Board or of a relevant committee, post notices of all meetings and the subject matter thereof as may be required by law;
  - (d) cause the secretary to the Board to record, prepare, and index the official minutes of the Board and its committees;
  - (e) file and preserve all official documents, correspondence, and proceedings of the Board and its committees;
  - (f) ensure proper custody, access and use of the TRS official seal and any counterparts consistent with section 5.9 of these Bylaws;
  - (g) maintain the official copy of these Bylaws;
  - (h) as directed by the Board, establish routine reporting mechanisms and

- procedures to the Board and prepare special reports to the Board; and
- (i) carry out other policies adopted by the Board.

**4.1.2** The executive director is the chief executive officer of TRS and is responsible to the Board for the general administration of TRS in accordance with relevant state laws and policies adopted by the Board. The executive director shall:

- (a) manage the daily operations of TRS as its chief executive officer;
- (b) assume managerial responsibility and leadership for the planning, operation, supervision, and evaluation of programs and services;
- (c) assume authority and responsibility for the selection, job description, assignment of duties, performance evaluation, promotion, compensation, and discipline, including dismissal of all TRS personnel except for:
  - (1) the selection and discipline, including dismissal of the chief audit executive, as provided in subsections 1.7 and 3.1.1 of these Bylaws. The executive director shall evaluate the chief audit executive in consultation with the Board and have authority and responsibility for other personnel matters, including the chief audit executive's assignment of duties;
  - (2) the selection of the chief investment officer as provided in subsection 1.7 of these Bylaws. The executive director shall evaluate the chief investment officer in consultation with the Board and have full authority and responsibility for all other personnel matters, including the chief investment officer's assignment of duties and discipline, including dismissal; and
  - (3) the selection of the ombudsman as provided in subsection 1.7 of these Bylaws. The executive director shall evaluate the ombudsman in consultation with the Board and have full authority and responsibility for all other personnel matters, including the ombudsman's assignment of duties and discipline, including dismissal. -
- (d) prepare and submit annual operating budgets for consideration by the Board;
- (e) prepare recommendations for policies to be considered by the Board and oversee the implementation of adopted policies;
- (f) recommend to the Board, either directly or through a designee, the selection and evaluation of the actuary, custodian for securities and for securities lending, investment or other consultant or advisor to the Board, and fiduciary counsel to the Board,;
- (g) organize TRS to accommodate its mission; and
- (h) develop programs designed to create a culture of engagement diversity, inclusion, and equity at TRS, including in the organization's recruitment, retention, position, pay and procurement practices.

## **4.2 Miscellaneous Duties.**

- 4.2.1** The executive director shall annually provide to members of the Board information regarding their qualification for office, including Texas Government Code Sections 825.002, -.003, -.0032, and -.010, and their responsibilities under applicable laws relating to standards of conduct for state officers including Texas Government Code Sections 553.002, 572.005, 572.051, 572.056, 572.058, 825.0032, 825.210-.212, and 2254.032, and Texas Penal Code Sections 32.43, 32.45, 36.02, 36.08, 36.10, 39.01, and 39.03, and any amended, new, or successor statutes.
- 4.2.2** The executive director shall annually provide to TRS employees information regarding their qualification for employment, including Texas Government Code Sections 573.001-.084 and 825.0032 and their responsibilities under applicable laws relating to standards of conduct for state employees including Texas Government Code Sections 553.002, 572.051, 572.005, 825.0032, 825.210-.212, and 2254.032, and Texas Penal Code Sections 32.43, 32.45, 36.02, 36.08, 36.10, 39.01, and 39.03, and any amended, new, or successor statutes.
- 4.2.3** In accordance with Texas Government Code Section 825.010(c), the executive director shall notify the chairman of the Board if he has knowledge that a potential ground for removal of a trustee exists. The chairman shall then notify the appropriate appointing officer or body that a potential ground for removal exists.

**4.3 Absence of Executive Director.** If the executive director will be away from the TRS headquarters for a brief period, as contemplated by section 4.4 of this article, the executive director may designate the deputy director to act in his or her stead generally or for a particular purpose. If the deputy director is also unavailable, the executive director may designate the chief financial officer to act for the executive director. In the absence of the executive director due to incapacity or otherwise when the duration of the absence is unknown and the absence may be extended or permanent, the deputy director shall perform such duties as are necessary to the administration of the system and shall have the responsibility and authority of the executive director until the Board designates the person succeeding to the responsibilities and authority of the executive director. In the absence of the executive director and the deputy director, the chief financial officer shall perform such duties as are necessary to the administration of the system and shall have the responsibility and authority of the executive director and the deputy director until the earlier of the following events: the executive director or the deputy director has resumed his or her duties; or the Board has designated the person succeeding to the responsibilities and authority of the executive director or the deputy director.

For no longer than the duration of an emergency situation, the chairman of the Board shall designate the person succeeding to the responsibilities and authority of the executive director pending approval by the Board of Trustees. A designee under this section shall have the responsibility and authority of the executive director. The chairman of the Board

or the deputy director shall notify the Texas Ethics Commission whenever there is a change in the person named to the position of executive director. A member of the Board is not eligible for temporary designation or permanent appointment to serve in the capacity of the executive director under Texas law.

**4.4 Delegating Responsibilities.** The executive director shall designate an employee of TRS to serve as secretary to the Board to assist in the execution of duties enumerated in subsection 4.1.1 of this article and may assign other employees of TRS as necessary to assist in carrying out these and other duties.

## **ARTICLE 5**

### **Miscellaneous Organizational Provisions**

**5.1 Administration of TRS.** The administration of TRS is governed by these Bylaws, Board policies, and applicable laws. In the event of a conflict between these Bylaws and applicable state law, the applicable state law shall govern to the extent necessary to resolve the conflict.

**5.2 Investments of TRS.** TRS investments are authorized to be made only in accordance with policies adopted by the Board and applicable state, federal, and foreign law.

**5.3 Custody of TRS Assets.** TRS trust assets shall be entrusted to one or more custodians only in accordance with policies and other actions of the Board and applicable state law. The Board shall select the custodian or custodians to hold TRS assets.

**5.4 Budgets and Fiscal Year.** The budgets of the pension trust fund and any other trust funds administered by TRS are adopted by the Board and may be amended by the Board in subsequent meetings. The TRS fiscal year shall begin September 1 and shall end the following August 31.

**5.5 Title to and Ownership of Assets.** Accounts or assets of TRS may be held in the name of TRS, a nominee, or other agent in accordance with state law. The assets of TRS shall not be considered at any time to be assets of the state or any employer of TRS members but are to be held in trust for the exclusive benefit of TRS members, annuitants, beneficiaries, or other trust participants.

**5.6 Authority to Act for TRS.** The Board delegates authority for the following matters:

- (a) investment decisions, in accordance with actions of the Board, including investment policies and applicable state law;
- (b) contracts for the purchase of goods and services, to the executive director or his designee in accordance with the budget, subject to applicable actions of the Board;
- (c) release of assets held in the name of TRS, its nominees, or other agents, in accordance with actions of the Board;
- (d) approval of retirement, death, and survivor benefit payments and refunds to the

executive director and his or her designees, in accordance with actions of the Board and applicable state law;

- (e) execution of vouchers for payment of TRS funds, in accordance with actions of the Board; and
- (f) initiation, defense, and settlement of lawsuits and other claims, to the executive director or his designee, subject to applicable actions of the Board.

**5.7 TRS Rules.** The executive director is authorized to draft and submit proposed rules for TRS to the Texas Secretary of State to be considered by the Board for adoption in accordance with state law.

**5.8 Personnel Policies.** TRS personnel policies shall be issued and disseminated to all employees by the executive director and revised from time to time, in compliance with Board policies and state law. TRS is an at-will employer.

**5.9 Official Seal of TRS.** The form of the official seal of TRS shall consist of a five-point star surrounded by a pair of branches and two concentric circles with the name “Teacher Retirement System of Texas” displayed in the space between the two circles. The seal may be either embossed or stamped. The executive director may designate in writing those TRS employees, in addition to and not in lieu of the secretary to the Board, who are authorized to use and affix the seal to TRS documents when the secretary is absent, incapacitated, or otherwise unavailable. Such a designated employee is authorized, in the capacity of an assistant secretary to the Board, to attest, to affix the seal, or to certify as to any matter as to which the secretary to the Board could attest, affix the seal, or certify. Purchase and use of identical counterparts of the seal is authorized when each counterpart is held by an authorized designee of the executive director. Affixing the TRS seal is not necessary to authenticate or attest a TRS document unless the seal is required by applicable law.

## **ARTICLE 6**

### **Amendment of Bylaws**

**6.1 Amendment of Bylaws.** These Bylaws may be amended only by a majority vote of the Board at any duly posted meeting of the Board for which notice of consideration of the proposed amendment has been properly given under the Open Meetings Act. At least every four years, these Bylaws shall receive a full review to determine necessity and adequacy of their need.

# ATTACHMENT 2

**Bylaws of the  
Board of Trustees of the  
Teacher Retirement System of Texas  
AMENDED September 16, 2022**

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**Bylaws of the Board of Trustees  
of the  
Teacher Retirement System of Texas  
AMENDED July 16, 2021**

**ARTICLE 1  
Organization of the Board of Trustees**

**1.1 Authority.** The Teacher Retirement System of Texas (“TRS” or the “system”) has been established pursuant to Article 16, Section 67 of the Texas Constitution, which requires TRS to have a Board of Trustees (the “Board”) to administer TRS and invest its funds. The assets of the TRS pension fund are required by state and federal law to be held in trust for the exclusive benefit of plan participants and beneficiaries. (See Texas Constitution, Art. 16, Section 67(a); Texas Government Code Sections 825.506 and 825.101; United States Internal Revenue Code Section 401(a).) The Board of Trustees of TRS is the trustee of all plan assets, is responsible for the general administration and operation of TRS and its subsidiaries and affiliates, and is authorized by law to adopt rules for the administration of TRS and the transaction of the business of the Board. (See Texas Government Code chapter 825.) All powers of trusteeship are held in the Board’s fiduciary capacity. The exercise or non-exercise of the Board’s powers are subject to the fundamental duties of prudence, loyalty, and impartiality (Restatement Third, Trust §§ 77-79); to a duty to respect the terms and purposes of the trust (Restatement Third, Trust § 76); and to other fiduciary duties of trusteeship. Although a trustee’s duties, like trustee powers, may be affected by the terms of the trust, the fiduciary duties of trusteeship are subject to minimum standards that require the trustee to act in good faith and in a manner consistent with the purposes of the trust and the interests of the beneficiaries. These fundamental standards of trusteeship are implicit in and normally essential to the trust relationship. (See Restatement Third, Trust §§ 70 and 86.) The Board has similar responsibilities for the health benefits programs under the Texas Public School Retired Employees Group Benefits Act and the Texas School Employees Uniform Group Health Coverage Act and other trusts or programs authorized by law to be administered by TRS.

**1.2 Composition.** The Board is composed of nine members, who serve for staggered terms of six years each, three of which expire on August 31 of each odd-numbered year. Trustees are appointed in accordance with statutory requirements (Texas Government Code Sections 825.001-.004).

A trustee whose term expires shall continue to perform the duties of the office until his or her successor shall be duly qualified. (Texas Constitution, Art. 16, Section 17; also see Government Code, Section 572.0211). Similarly, a trustee who tenders his or her resignation nonetheless holds over until his or her successor is duly qualified for the office. Limited exceptions may arise, one of which is the removal of an office holder in a quo warranto proceeding (Civ. Prac. & Rem. Code Section 66.001).

### **1.3 Chairman of the Board of Trustees.**

- 1.3.1 The Governor of the State of Texas designates a member of the Board as the presiding officer of the Board. (Texas Government Code Section 825.201.)
- 1.3.2 The chairman shall preside over meetings of the Board and perform such other duties as are assigned by statute, these Bylaws, or other action of the Board.
- 1.3.3 The chairman serves at the pleasure of the Governor.

### **1.4 Vice Chairman of the Board of Trustees.**

- 1.4.1 The Board shall elect a vice chairman who is a member of the Board.
- 1.4.2 In case of the absence, death, resignation, disability, removal, or disqualification of the chairman, the vice chairman shall perform the duties of the chairman until the chairman shall resume his or her office or a successor chairman has been appointed.
- 1.4.3 The vice chairman serves at the pleasure of the Board.

**1.5 Absence of Chairman and Vice Chairman.** In the case of the absence, death, resignation, disability, removal, or disqualification of both the chairman and vice chairman, the member of the Board with the longest service on the Board (considering all Board service), as certified by the executive director, shall exercise the duties of the chairman, as acting chairman, until the chairman or vice chairman shall resume his or her office or until a successor chairman has been appointed or a successor vice chairman has been elected. In the event there are two or more members with equal length of service, the executive director shall designate one of those members to serve as the acting chairman.

### **1.6 Elections.**

- 1.6.1 Elections for vice chairman and any other positions that require election by the Board shall be conducted annually on or before the Board's first regular meeting of the fiscal year or as soon thereafter as may be practicable.
- 1.6.2 When a position subject to Board election becomes vacant, a special election for the position shall be held as soon thereafter as practicable.
- 1.6.3 Subject to the proviso that such persons serve at the pleasure of the Board, persons elected to positions under this section serve for a term that expires with the next election for that position or upon resignation from the position by the person holding it.

**1.6.4** Nominations for the vice chairman of the Board and any other position that requires election by the Board will be made from the floor by Board members at a meeting of the Board or by special committee established for the purpose of making nominations. A Board member may self-nominate for any such position.

**1.6.5** Elections conducted in Board meetings shall be conducted in an open meeting by acclamation or by a roll-call vote pursuant to a motion that has been seconded. Unless a different number is required by law, a majority vote of a quorum is required to elect a nominee for each election required by these Bylaws.

**1.7 Responsibilities of the Board.** Board members are TRS fiduciaries and shall discharge their duties in the exclusive interest of members and annuitants for the purpose of providing authorized benefits to participants and their beneficiaries. The Board is tasked with the general administration and operation of the retirement system. In order for the Board to monitor and evaluate the effectiveness of the system it shall:

- (a) adopt and periodically review the TRS mission in light of the Board's constitutional and statutory authority and set clear goals for its accomplishment;
- (b) adopt rules, regulations, and bylaws as appropriate or required by law;
- (c) establish committees to make recommendations to the Board and help carry out the Board's responsibilities; however, such committees may not exercise authority required under these Bylaws or by state or federal law to be exercised by the Board as a whole, and the Board may consider or take any action otherwise specified to be taken or considered by a committee created pursuant to article 3 of these Bylaws;
- (d) approve the annual operating budgets;
- (e) adopt and periodically review policies for the operation of the system;
- (f) consider appeals as provided in Board rules;
- (g) be responsible for the following positions:
  - (1) selection, job description, assignment of duties, performance evaluation, compensation, and discipline, including dismissal, of the executive director;
    - (aa) provide oversight and direction to the executive director to ensure that effective management practices are followed in the organization;
    - (bb) delegate to the executive director the responsibility for all administrative functions; and
    - (cc) delegate authority to the staff through the executive director;
  - (2) selection, job description, assignment of duties, performance evaluation, compensation, and discipline, including dismissal, of the chief audit executive in consultation with the Audit, Compliance and Ethics Committee and executive director;
  - (3) selection, job description, assignment of duties, performance evaluation,

compensation, and discipline, including dismissal, of the ombudsman in consultation with the executive director;

- (4) selection, performance evaluation, and establish compensation of the chief investment officer, in consultation with the executive director;
- (h) ensure the establishment of a system for equitable and effective hiring, evaluation, compensation, and termination of employees;
- (i) set not-to-exceed amounts in the exempt salary schedule in consultation with the Compensation Committee and executive director; and
- (j) ensure an adequate working environment for staff members;
- (k) receive reports from the staff, investment consultants and advisors, and others regarding the investment portfolio;
- (l) review investment performance, asset mix, portfolio characteristics, cash flow, transactions, and monitor compliance with investment policies and guidelines;
- (m) select one or more commercial banks, depository trust companies or other entities to serve as custodian(s) of TRS securities and to lend such securities, provided that, for avoidance of doubt, this requirement 1) does not apply to regulated brokerage, clearing, exchange, or similar accounts into which TRS is required to deposit assets or collateral and 2); the selected securities lending entity(ies) may act independently of the selected custodian(s)
- (n) select the following consultants and advisors to the Board:
  - (1) select and evaluate investment consultants or advisors to provide such expert advice and assistance to the Board as the Board deems necessary to exercise its investment and trust administration responsibilities;
  - (2) select and evaluate fiduciary counsel;
  - (3) select and evaluate an actuary;
- (o) appoint members to the following:
  - (1) the Medical Board; and
  - (2) members and officers of the Retirees Advisory Committee.

## **1.8 Board Travel.**

**1.8.1** Members of the Board shall be reimbursed for allowable travel expenses while on official TRS business as specified in state law and the “TRS Travel Rules and Guidelines.”

**1.8.2** Official TRS business is defined as travel while acting as a designated representative of the Board (such as meeting with elected officials or Board consultants and advisors on behalf of the Board whether within or outside the state), travel to and from meetings of the Board, meetings of Board committees, orientation meetings, or other travel within the state in the capacity of a member of the Board.

**1.8.3** In addition to travel on official TRS business as defined in subsection 1.8.2

of this section, it is anticipated that each Board member will receive reimbursement established through the budget process of allowable Board travel expenses to attend conferences and other activities meeting the following criteria:

- (a) The purpose of the expense is related to the business of TRS and the Board; and
- (b) Attendance at the function will benefit the Board or a Board member in the exercise of TRS responsibilities.

**1.8.4** Travel allocations are not compensation, nor are they in the nature of an allowance paid regardless of whether travel expenses are incurred. Any international travel must receive advance approval as required by law.

**1.8.5** The Executive Director in consultation with the Legal & Compliance Division shall be responsible for developing and administering procedures for travel under sections 1.8.2 and 1.8.3.

**1.9 Board Education.** Each Board member is encouraged to attend workshops and training sessions on such matters as fiduciary duties, actuarial valuations, investment issues, and benefits delivery, which may enable the Board member to better fulfill trustee responsibilities to the system.

## **ARTICLE 2**

### **Meetings of the Board**

#### **2.1 Meetings of the Board.**

**2.1.1** The Board shall meet approximately five, but at least four, times per fiscal year. The dates for regular meetings will be approved annually in advance by the Board at the first regular meeting of each fiscal year or as soon thereafter as practicable. When necessary, and in addition to the provisions of subsection 2.1.6 of this article, the Board may add or cancel a regular meeting or change the date, time, or location of a regular meeting by action of the Board.

**2.1.2** Special meetings of the Board may be held either upon the call of the chairman of the Board or the call of at least four members of the Board, or upon action of the Board. A call by the chairman or by other members of the Board must be communicated to the executive director within sufficient time to permit posting of the meeting as required by law. The call or action of the Board, as applicable, shall specify the date of each special meeting and may specify the time and place for each special meeting.

**2.1.3** Meetings shall be held at TRS headquarters, in Austin, Texas, unless by call or action of the Board another location is specified.

**2.1.4** Regular and special meetings shall begin at a time designated by the chairman

of the Board unless a time has been specified in the call or by action of the Board in setting a particular meeting.

**2.1.5** Emergency meetings may be called in the same manner as special meetings.

The Board member who initiates the call for an emergency meeting shall provide the executive director with the reason for the emergency or urgent public necessity. An emergency meeting is one which cannot be posted within the seven day advance notice normally required by the Open Meetings Act (Texas Government Code Chapter 551, Section 551.044, or a successor statute) (the “Act”), but which is needed because of “imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the government body<sup>22</sup> or as otherwise defined by the Act, as amended, court decision, or other applicable law. Emergency meetings shall be posted in accordance with applicable law, including Texas Government Code Section 551.045 (or its successor statute), requiring posting for at least two hours before the meeting is convened.

**2.1.6** If a catastrophe prevents the Board from convening a properly posted meeting, the Board may, under Texas Government Code Section 551.0411, convene in a convenient location within 72 hours pursuant to Texas Government Code Section 551.045 by giving written notice of the date, hour, place, and agenda of the rescheduled and/or relocated meeting at least two hours before it begins. For the purposes of this subsection, the term “catastrophe” has the meaning assigned in Texas Government Code Section 551.0411. In consultation with the executive director, the chairman of the Board shall specify the date, hour, and place of a meeting rescheduled under this subsection to accommodate as many members of the public, board, and staff as possible.

**2.1.7** In addition to the provisions of subsection 2.1.6 of this article, a special or emergency meeting of the Board may be canceled or rescheduled, or the location of the meeting changed, only by action of the Board or by a call of at least four members of the Board communicated to the executive director within sufficient time for TRS to comply with all posting requirements for the meeting. Unless a time has been specified in the call or action of the Board rescheduling the meeting, the chairman may set the time of a rescheduled meeting, though any such time must meet all posting requirements of applicable law.

**2.2 Public Comment at Meetings.**

**2.2.1** The Board will allow reasonable opportunity for public comment to the Board on any issue under the jurisdiction of the Board. The chairman may determine the total time to allot to public comments at a meeting of the Board.

**2.2.2** Persons who desire to deliver oral comments at a Board meeting must complete the required sign-in form, preferably before the public comment agenda item is reached during the Board meeting. Persons who desire to

provide oral comments virtually at a Board meeting must complete the required electronic sign-in form preferably by 5:00 pm the day before public comment is scheduled. The chairman of the meeting will specify the length of time to be allowed for each person to speak. Persons wishing to speak before the Board shall provide the following information:

- (a) name and contact information;
- (b) the name of the person or group, if any, the speaker is representing;
- (c) the agenda item upon which the person wishes to speak, if any; and
- (d) if the matter does not relate to an agenda item, a brief description of the nature of the matter to be addressed by the speaker.

If the chairman determines based on the information provided that public comment is made for the purpose of soliciting TRS business and the particular solicitation is not specifically identified on the agenda, the chairman may deny the opportunity to deliver the comment.

### **2.3 Meeting Agendas.**

**2.3.1** The agenda for each Board meeting shall be set by the chairman of the Board and when appropriate other Board members in consultation with the executive director. The executive director shall prepare and distribute to the Board the agenda and relevant written materials.

**2.3.2** Items may be submitted for inclusion on the agenda of any Board meeting by any Board member or by the executive director prior to posting. The executive director shall determine the initial order of the agenda items prior to posting. Board members desiring to add an agenda item must submit it to the executive director by 5:00 p.m. not later than the tenth TRS business day before the meeting.

**2.3.3** Agenda items may be added to a posted agenda by the chairman, by the executive director, or by written request of any Board member, provided that the proposed addition is submitted to the executive director in time to post the amendment to the agenda in compliance with the Open Meetings Act. If the item must be added as an emergency agenda item due to insufficient time to post it as a regular item, the request to add the item must include a valid reason for the emergency, as determined by the executive director in consultation with the general counsel.

**2.4 Notice of Meetings.** The executive director will cause meeting notices to be posted in compliance with these Bylaws and the Open Meetings Act.

**2.5 Auxiliary Aids or Services at Meetings.** Persons who do not speak English or persons with disabilities may request auxiliary aids or services to be provided at a meeting, such as language interpreters or interpreters for persons who are deaf or hearing impaired, or readers or large print or Braille texts for persons who are visually impaired. If the request is made to the executive director with adequate advance notice before the meeting, the executive

director shall cause reasonable accommodations to be provided to persons with disabilities to the extent required by law and may exercise discretion to determine any other accommodations to be provided.

## **2.6 Procedure.**

**2.6.1** A quorum of the Board is a majority of the number of members fixed by statute, unless otherwise defined by applicable law. A quorum is required for the board to conduct business. Unless otherwise provided by law, a majority vote of the board (i.e., a majority vote of the members present and voting at a meeting where a quorum is present) is required for action or decision by the Board, and at least a majority of the minimum number of members needed to constitute a quorum must vote in favor of the action or decision for it to be approved by the Board. Abstentions are not counted in determining the outcome of a vote but are counted in determining a quorum. The most recent edition of *Robert's Rules of Order Newly Revised*, when not in conflict with other Board-adopted rules of procedure, these Bylaws, or applicable law, shall be the rules of parliamentary procedure and order for the Board and its committees. The TRS general counsel shall assist and advise the chairman of the Board or of a committee regarding interpretation and application of the rules of parliamentary procedure.

**2.6.2** The minutes of the Board shall contain each subject of discussion and deliberation, all motions, seconds, if any, and the vote, if any, on such motions. Each Board member shall be given an opportunity to record in the minutes his or her vote on a motion and to have included in the minutes the reasons stated in the meeting for his or her vote.

## **ARTICLE 3 Committees**

**3.1 Standing Committees.** In accordance with section 1.7 of these Bylaws, the Board may establish standing committees by amendment of this article. A quorum of a standing committee shall be a majority of the members of the committee. Any committee may convene in joint session with any other committee. The committees shall normally meet on a quarterly basis or at the call of its chairman. Standing committees may perform other activities related to the committees' responsibilities as requested by the Board.

**3.1.1 Audit, Compliance, and Ethics Committee.** The Board shall have an Audit, Compliance, and Ethics Committee. The responsibilities of the Audit, Compliance, and Ethics Committee shall be as follows:

- (a) Purpose
  - (1) To assist the Board in fulfilling its fiduciary oversight responsibilities for
    - (aa) the financial reporting process;
    - (bb) the risk management and internal control system;

- (cc) the internal audit process;
  - (dd) the external audit process;
  - (ee) the process for monitoring compliance with laws, regulations, and policies, and
  - (ff) reporting and other activities.
- (2) To coordinate and interface with the Board regarding Audit, Compliance, and Ethics Committee activities and other pertinent matters.
- (b) Financial Reporting Process
- (1) Review and understand significant accounting and reporting matters requiring judgment (including those involving complex or unusual transactions), consider recent professional and regulatory pronouncements, and understand the impact of such matters and pronouncements on financial statements.
  - (2) Review with management and the external and internal auditors the results of audits, including any difficulties encountered.
  - (3) Review all significant suggestions for improved financial reporting made by the external financial statement auditor and by the internal auditor.
  - (4) Review the annual financial statements, and consider whether they are complete, consistent with information known to committee members, and reflect appropriate accounting principles.
  - (5) Review with management and the auditors all matters required to be communicated to the committee under generally accepted auditing standards.
- (c) Governance, Risk Management, and Internal Control Activities
- (1) Receive reports on and discuss the internal and external auditors' assessment of the effectiveness of the organization's governance, risk management, and internal control activities, including technology governance and fraud risk prevention activities.
  - (2) Obtain reports from internal and external auditors and compliance staff on significant findings and recommendations relating to governance, risk management, and internal control activities, together with management's response, including receiving reports regarding any violation of portfolio risk management standards as required by the Investment Policy Statement of the Board for (1) any passive violation of prescribed portfolio policy limits as the result of changing market or credit conditions, and (2) any active violation of prescribed portfolio policy limits as a result of entering into an agreement or investment that breaches a policy limit at inception and the corrective action plan implemented to cure such violation.
- (d) Internal Audit Process
- (1) Assure and maintain, through the organizational structure and by

other means, the independence of the internal audit process. Ensure there are no unjustified restrictions or limitations on the internal audit function.

- (2) Ensure that internal auditors have access to all documents, information and systems in the organization that are reasonably needed to accomplish the purpose of the audit, unless any such information is subject to a legally applicable and properly asserted privilege.
  - (3) Review with management and the chief audit executive the charter, plans, activities, budget, staffing, qualifications and organizational structure of the internal audit function. Recommend to the Board an internal audit charter or modifications to such charter.
  - (4) Review and recommend audit plans for approval by the Board.
  - (5) Review all internal audit reports and management letters.
  - (6) Review the responsiveness and timeliness of management's follow-up actions pertaining to any reported audit recommendations.
  - (7) Receive periodic reports of advisory and consulting activities by internal auditors.
  - (8) Authorize audits or investigations into any matters within the committee's scope of responsibilities and provide appropriate reports to the Board.
  - (9) Provide input and advice to the Board in the appointment, replacement, dismissal and the annual evaluation of the performance and compensation of the chief audit executive in consultation with the executive director.
  - (10) Review the effectiveness of the internal audit function, including compliance with the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing* and Texas Government Code Chapter 2102 (the Texas Internal Auditing Act).
  - (11) Designate the chief audit executive as the primary point of contact for handling audit-related matters pertaining to audits, examinations, investigations or inquiries of the State Auditor's Office, other appropriate state or federal agencies, and other external audit groups.
- (e) External Audit Process
- (1) Review the external auditors' proposed audit scope and approach, including coordination of audit effort with internal audit.
  - (2) Review the performance of the external auditors, and, upon request, recommend to the Board the appointment or discharge of the external auditors. Obtain input from management, the chief audit executive, and other parties as appropriate.
  - (3) Review the independence of the external auditors by obtaining

statements from the auditors on relationships between the auditors and the organization, including any non-audit services, and discussing the relationship with the auditors.

- (4) Review the audited financial statements, associated management letters, attestations on the effectiveness of the internal control structure and procedures for financial reporting, and required communications.
  - (5) Review all external audit reports and management letters.
  - (6) Review the responsiveness and timeliness of management's follow-up actions pertaining to any reported audit recommendations.
- (f) Compliance Process
- (1) Access the effectiveness of the system for monitoring compliance with laws, regulations and policies, and the results of management's follow-up actions pertaining to any reported instances of non-compliance.
  - (2) Review the findings and recommendations of any examinations by oversight agencies and compliance and auditor observations.  
Obtain regular updates and reports from the chief compliance officer and, as appropriate, management regarding compliance matters.
- (g) Ethics Process
- (1) Recommend, as deemed advisable, reports regarding conflict of interest disclosures from the chief compliance officer or reports that are submitted directly to the chairman of the committee as prescribed in an applicable ethics policy;
  - (2) Recommend to the Board waivers of any disclosed conflict of interest or a waiver of the prohibition against involvement in any matter affected by a disclosed conflict of interest, at a meeting held in compliance with the Open Meetings Act;
  - (3) Recommend to the Board or the executive director the prudence of contracting on behalf of TRS with any entity or a controlled affiliate of such entity that employs or is represented by a former trustee or former employee;
  - (4) Recommend, as deemed advisable, reports from the executive director of any approval given for outside employment by key employees, including the nature of the employment;
  - (5) Recommend to the Board approval in advance of any outside employment by the executive director;
  - (6) Recommend, as deemed advisable, reports from the executive director of any disciplinary action disclosed by key employees; and
  - (7) Recommend, as deemed advisable, reports of violations of a TRS ethics policy and any resulting disciplinary actions.

- (h) Reporting and Other Activities
  - (1) At least quarterly, report to the Board about committee activities, issues, and related recommendations.
  - (2) Provide an open avenue of communication among management, internal audit, external auditors, compliance, and the Board.

**3.1.2 Benefits Committee.** The Board shall have a Benefits Committee. The purpose of the committee is to assist the Board in carrying out its responsibility for delivery of benefits under programs administered by TRS. The Benefits Committee shall:

- (a) review and make recommendations to the Board related to programs within its oversight;
- (b) receive recommendations from the Retirees Advisory Committee regarding TRS-Care, and recommend related actions to the Board;
- (c) recommend to the Board persons to serve on the Retirees Advisory Committee;
- (d) establish performance standards for professional benefits consultants and participate in performance evaluations of those consultants;
- (e) recommend to the Board persons to serve on the Medical Board;
- (f) review periodic reports by TRS staff or consultants on benefit delivery services, benefit-related trends, and other significant benefit topics; and
- (g) receive reports and make recommendations regarding customer service standards and satisfaction;
- (h) the chair of the committee serves as the point of contact for the ombudsman, in consultation with the executive director, regarding member issues that occur in between committee meetings; and
- (i) provide input and advice to the Board in the appointment, replacement, dismissal and the annual evaluation of the performance and compensation of the ombudsman in consultation with the executive director.

**3.1.3 Budget Committee.** The Board shall have a Budget Committee. The purpose of the committee is to assist the Board in carrying out its fiduciary responsibility for budgeting and accounting for all expenses of the systems' funds. The Budget Committee shall:

- (a) recommend to the Board annual operating budgets;
- (b) recommend intra-budget transfers and budget amendments for approval by the Board; and
- (c) monitor implementation of the operating budgets of the pension trust and other programs.

**3.1.4 Investment Management Committee.** The Board shall have an Investment Management Committee. The purpose of the Committee is to assist the Board in carrying out its responsibilities to invest and reinvest the system's assets. The Investment Management Committee shall:

- (a) recommend individual investments and investment- related action to the Board when the recommendation is required by the Board's Investment Policy Statement or resolutions adopted by the Board;
- (b) recommend to the Board overarching strategies for all TRS investments, and to monitor those strategies;
- (c) recommend to the Board or an applicable committee investment objectives, the establishment of performance and risk measurement and attribution standards for plan assets, each asset class and component portfolios, and risk parameters and controls, and to monitor those that the Board approves;
- (d) monitor the retirement system's investment processes and consider recommending to the Board or an applicable committee proposed changes to the system's investment processes;
- (e) monitor the investment performance of the overall fund, receive investment reports, and recommend to the Board or an applicable committee policies for appropriate reporting and communication mechanisms to keep the committee and the Board appropriately informed about TRS investments;
- (f) receive reports from staff regarding compliance with portfolio risk management standards as required by the Investment Policy Statement of the Board;
- (g) recommend to the Board approval of action plans submitted by staff to cure passive violations of prescribed policy limits when it is necessary to extend the cure period beyond the time allowed by policy for staff to cure such violation;
- (h) review proposed new or amended investment policies and make recommendations relating to any investment policy, including reporting and communication requirements, to the Policy Committee
- (i) recommend to the Board or the staff, as applicable, that TRS engage professional independent service providers, advisors, or consultants to review internal investment operations and render advice as appropriate. The committee may review responsive proposals and recommend engagement of one or more firms to the Board or the staff, as applicable; and

**3.1.5 Policy Committee.** The Board shall have a Policy Committee. The purpose of the Policy Committee is to assist the Board in fulfilling its policy-making responsibilities, in accordance with Texas Government Code Sections 825.102 and 825.113. The Policy Committee shall:

- (a) make or review policy proposals, including those made by staff through procedures established by the executive director, and recommend new

written Board policies and modifications to existing written policies as needed;

- (b) recommend new rules and rule amendments as needed and review existing rules periodically as required by law;
- (c) adopt and follow a plan of review for each fiscal year to ensure that all written TRS Board policies are reviewed periodically; and
- (d) ensure that proposed Board policies or policy changes have been appropriately reviewed, including by staff pursuant to procedures established by the executive director or by consultants as necessary.

**3.1.6 Strategic Planning Committee.** The Board shall have a Strategic Planning Committee. The purpose of the committee is to assist the Board in its oversight responsibilities relating to strategic planning, including related risks, opportunities, and major projects. The Strategic Planning Committee shall:

- (a) receive reports from staff regarding the development and execution of strategic planning, including regular updates on TRS' medium and long-term initiatives, the TRS Strategic Plan, key performance indicators, and the identification and mitigation of strategic plan risks and vulnerabilities;
- (b) provide input and guidance regarding:
  - (1) assessment of the internal and external forces and variables that impact TRS' strategic planning;
  - (2) formulation and execution of strategic goals and objectives; and
  - (3) alignment of the organization behind the agency's strategic goals and objectives, including alignment with major projects, resource allocation, and the Executive Director's goals and objectives;
- (c) review and make recommendations to the Board on the TRS mission and vision statements and the strategic plan goals and objectives;
- (d) provide enterprise risk oversight by discussing and considering matters relating to the identification, prioritization, management, and monitoring of critical risks;
- (e) receive reports from staff regarding the identification, evaluation, and management of risk across the enterprise;
- (f) receive reports from staff regarding major project development and execution;
- (g) provide input and guidance to TRS staff on the development and execution of major projects;
- (h) make such other recommendations to the Board as the committee deems necessary pertaining to any matters regarding enterprise risk mitigation, tolerance levels, and reduction strategies; and

**3.1.7 Compensation Committee.** The Board shall have a Compensation Committee.

The purpose of the Committee is to assist the Board in its responsibilities to establish a system for the equitable and effective compensation of employees. The Compensation Committee shall:

- (a) review the Performance Pay Plans and when needed make recommendations concerning it to the Board;
- (b) provide direction to the executive director and make recommendations to the Board on the compensation of TRS staff and other compensation matters referred to the Compensation Committee by the Board chair;
- (c) recommend to the Board adoption of not-to-exceed amounts in the exempt salary schedule in consultation with the executive director; and
- (d) monitor efficiency and effectiveness of the TRS classification system to attract and retain a qualified workforce.

**3.2 Special Committees.** Special committees other than standing committees established in section 3.1 may be created by action of the Board, which shall establish the purpose and responsibilities of the committee and may establish the term for which it shall exist.

**3.3 Composition of Committees.** A committee will be composed of five members of the Board unless otherwise provided by action of the Board or these Bylaws. The chairman of the Board annually shall appoint committee members subject to the consent of the Board on or before the Board's first regular meeting of the fiscal year or as soon thereafter as may be practicable. The chairman of the Board shall designate the chairman of each committee. Committee chairmen serve as chairmen at the pleasure of the chairman of the Board. The term of a committee member expires on the earlier to occur of the date of the Board's consent to the appointment of a successor committee member to fill the member's position or the date on which the member's term as a Board member has expired according to law and the person is no longer holding over and serving as a member of the Board. The chairman of the Board may appoint an interim successor to the committee for a member whose Board term has expired, who is holding over as a Board member, but who has resigned his or her committee position. Any such interim successor member of a committee may serve until the meeting of the Board at which the Board votes to consent to the appointment of committee members.

**3.4 Advisory and Auxiliary Committees.** If authorized or required by state law or Board policy, the Board shall appoint advisory or auxiliary committees of non-board members to assist TRS. These committees may be composed of volunteers, independent contractors, or employees. Such committees include the Medical Board and the Retirees Advisory Committee for TRS-Care. The terms, qualifications, and methods of appointment of these committees shall be governed by relevant state law or Board policy. The Board shall

designate the chairman and vice chairman, if any, of each such committee.

**3.5 Committee Agendas.** The agenda for each committee meeting shall be set in a manner similar to a Board meeting agenda, but with the committee chairman and members having the same authority with regard to the committee agenda of committee meetings that the Board chairman and members have with regard to the Board agenda of Board meetings.

**3.6 Committee Attendance.** Any member of the Board may attend a meeting of a committee of which he or she is not a member but shall not vote. Because the attendance of five or more trustees at a Board committee meeting constitutes a quorum of the full Board, public notice of a committee meeting is also posted as a Board meeting under the Open Meetings Act (Texas Government Code Chapter 551) in anticipation of a quorum of the full Board possibly attending the meeting. Also in compliance with the Open Meetings Act, a record is kept of the attendance of a quorum of the full Board at a Board committee meeting. The attendance of a quorum of the full Board at a Board committee meeting is not a regular, special, or emergency Board meeting under Article 2 of these Bylaws, relating to meetings of the Board. In addition, the attendance of a quorum of the full Board at a Board committee meeting is not a regularly scheduled Board meeting under Texas Government Code Section 825.010(a)(5), relating to grounds for removal of a trustee because of absence from Board meetings.

## **ARTICLE 4**

### **Executive Director**

**4.1 Responsibilities of Executive Director.** The Board shall employ an executive director as required by law, with such duties as may be required by law of the chief executive officer and chief administrative employee of TRS and with such other duties as may be established by the Board in its policies, resolutions, and other actions. In these Bylaws, the term “executive director” means the person appointed by the Board pursuant to Texas Government Code Section 825.202 (or a successor statute) and these Bylaws.

- 4.1.1** With respect to the operations of the Board itself the executive director shall:
- (a) make preparations, including trustee travel arrangements, for all meetings of the Board and its committees;
  - (b) under the direction of the chairman of the Board or a relevant committee, prepare and distribute the agendas and appropriate documentation for all meetings of the Board and its committees;
  - (c) under the direction of the chairman of the Board or of a relevant committee, post notices of all meetings and the subject matter thereof as may be required by law;
  - (d) cause the secretary to the Board to record, prepare, and index the official minutes of the Board and its committees;
  - (e) file and preserve all official documents, correspondence, and proceedings of the Board and its committees;

- (f) ensure proper custody, access and use of the TRS official seal and any counterparts consistent with section 5.9 of these Bylaws;
- (g) maintain the official copy of these Bylaws;
- (h) as directed by the Board, establish routine reporting mechanisms and procedures to the Board and prepare special reports to the Board; and
- (i) carry out other policies adopted by the Board.

**4.1.2** The executive director is the chief executive officer of TRS and is responsible to the Board for the general administration of TRS in accordance with relevant state laws and policies adopted by the Board. The executive director shall:

- (a) manage the daily operations of TRS as its chief executive officer;
- (b) assume managerial responsibility and leadership for the planning, operation, supervision, and evaluation of programs and services;
- (c) assume authority and responsibility for the selection, job description, assignment of duties, performance evaluation, promotion, compensation, and discipline, including dismissal of all TRS personnel except for:
  - (1) the chief audit executive as provided in subsections 1.7 and 3.1.1 of these Bylaws;
  - (2) the selection of the chief investment officer as provided in subsection 1.7 of these Bylaws. The executive director shall evaluate the chief investment officer in consultation with the Board and have full authority and responsibility for all other personnel matters, including the chief investment officer's assignment of duties and discipline, including dismissal; and
  - (3) the ombudsman as provided in subsection 1.7 of these Bylaws. .
- (d) prepare and submit annual operating budgets for consideration by the Board;
- (e) prepare recommendations for policies to be considered by the Board and oversee the implementation of adopted policies;
- (f) recommend to the Board, either directly or through a designee, the selection and evaluation of the actuary, custodian for securities and for securities lending, investment consultant or advisor to the Board, and fiduciary counsel to the Board,;
- (g) organize TRS to accommodate its mission; and
- (h) develop programs designed to create a culture of diversity, inclusion, and equity at TRS, including in the organization's recruitment, retention, position, pay and procurement practices.

## **4.2 Miscellaneous Duties.**

**4.2.1** The executive director shall annually provide to members of the Board information regarding their qualification for office, including Texas Government Code Sections 825.002, -.003, -.0032, and -.010, and their responsibilities under applicable laws relating to standards of conduct for state

officers including Texas Government Code Sections 553.002, 572.005, 572.051, 572.056, 572.058, 825.0032, 825.210-.212, and 2254.032, and Texas Penal Code Sections 32.43, 32.45, 36.02, 36.08, 36.10, 39.01, and 39.03, and any amended, new, or successor statutes.

**4.2.2** The executive director shall annually provide to TRS employees information regarding their qualification for employment, including Texas Government Code Sections 573.001-.084 and 825.0032 and their responsibilities under applicable laws relating to standards of conduct for state employees including Texas Government Code Sections 553.002, 572.051, 572.005, 825.0032, 825.210-.212, and 2254.032, and Texas Penal Code Sections 32.43, 32.45, 36.02, 36.08, 36.10, 39.01, and 39.03, and any amended, new, or successor statutes.

**4.2.3** In accordance with Texas Government Code Section 825.010(c), the executive director shall notify the chairman of the Board if he has knowledge that a potential ground for removal of a trustee exists. The chairman shall then notify the appropriate appointing officer or body that a potential ground for removal exists.

**4.3 Absence of Executive Director.** If the executive director will be away from the TRS headquarters for a brief period, as contemplated by section 4.4 of this article, the executive director may designate the deputy director to act in his or her stead generally or for a particular purpose. If the deputy director is also unavailable, the executive director may designate the chief financial officer to act for the executive director. In the absence of the executive director due to incapacity or otherwise when the duration of the absence is unknown and the absence may be extended or permanent, the deputy director shall perform such duties as are necessary to the administration of the system and shall have the responsibility and authority of the executive director until the Board designates the person succeeding to the responsibilities and authority of the executive director. In the absence of the executive director and the deputy director, the chief financial officer shall perform such duties as are necessary to the administration of the system and shall have the responsibility and authority of the executive director and the deputy director until the earlier of the following events: the executive director or the deputy director has resumed his or her duties; or the Board has designated the person succeeding to the responsibilities and authority of the executive director or the deputy director.

For no longer than the duration of an emergency situation, the chairman of the Board shall designate the person succeeding to the responsibilities and authority of the executive director pending approval by the Board of Trustees. A designee under this section shall have the responsibility and authority of the executive director. The chairman of the Board or the deputy director shall notify the Texas Ethics Commission whenever there is a change in the person named to the position of executive director. A member of the Board is not eligible for temporary designation or permanent appointment to serve in the capacity of the executive director under Texas law.

**4.4 Delegating Responsibilities.** The executive director shall designate an employee of TRS to serve as secretary to the Board to assist in the execution of duties enumerated in subsection 4.1.1 of this article and may assign other employees of TRS as necessary to assist in carrying out these and other duties.

## **ARTICLE 5**

### **Miscellaneous Organizational Provisions**

**5.1 Administration of TRS.** The administration of TRS is governed by these Bylaws, Board policies, and applicable laws. In the event of a conflict between these Bylaws and applicable state law, the applicable state law shall govern to the extent necessary to resolve the conflict.

**5.2 Investments of TRS.** TRS investments are authorized to be made only in accordance with policies adopted by the Board and applicable state, federal, and foreign law.

**5.3 Custody of TRS Assets.** TRS trust assets shall be entrusted to one or more custodians only in accordance with policies and other actions of the Board and applicable state law. The Board shall select the custodian or custodians to hold TRS assets.

**5.4 Budgets and Fiscal Year.** The budgets of the pension trust fund and any other trust funds administered by TRS are adopted by the Board and may be amended by the Board in subsequent meetings. The TRS fiscal year shall begin September 1 and shall end the following August 31.

**5.5 Title to and Ownership of Assets.** Accounts or assets of TRS may be held in the name of TRS, a nominee, or other agent in accordance with state law. The assets of TRS shall not be considered at any time to be assets of the state or any employer of TRS members but are to be held in trust for the exclusive benefit of TRS members, annuitants, beneficiaries, or other trust participants.

**5.6 Authority to Act for TRS.** The Board delegates authority for the following matters:

- (a) investment decisions, in accordance with actions of the Board, including investment policies and applicable state law;
- (b) contracts for the purchase of goods and services, to the executive director or his designee in accordance with the budget, subject to applicable actions of the Board;
- (c) release of assets held in the name of TRS, its nominees, or other agents, in accordance with actions of the Board;
- (d) approval of retirement, death, and survivor benefit payments and refunds to the executive director and his or her designees, in accordance with actions of the Board and applicable state law;
- (e) execution of vouchers for payment of TRS funds, in accordance with actions of the Board; and
- (f) initiation, defense, and settlement of lawsuits and other claims, to the executive

director or his designee, subject to applicable actions of the Board.

**5.7 TRS Rules.** The executive director is authorized to draft and submit proposed rules for TRS to the Texas Secretary of State to be considered by the Board for adoption in accordance with state law.

**5.8 Personnel Policies.** TRS personnel policies shall be issued and disseminated to all employees by the executive director and revised from time to time, in compliance with Board policies and state law. TRS is an at-will employer.

**5.9 Official Seal of TRS.** The form of the official seal of TRS shall consist of a five-point star surrounded by a pair of branches and two concentric circles with the name “Teacher Retirement System of Texas” displayed in the space between the two circles. The seal may be either embossed or stamped. The executive director may designate in writing those TRS employees, in addition to and not in lieu of the secretary to the Board, who are authorized to use and affix the seal to TRS documents when the secretary is absent, incapacitated, or otherwise unavailable. Such a designated employee is authorized, in the capacity of an assistant secretary to the Board, to attest, to affix the seal, or to certify as to any matter as to which the secretary to the Board could attest, affix the seal, or certify. Purchase and use of identical counterparts of the seal is authorized when each counterpart is held by an authorized designee of the executive director. Affixing the TRS seal is not necessary to authenticate or attest a TRS document unless the seal is required by applicable law.

## **ARTICLE 6**

### **Amendment of Bylaws**

**6.1 Amendment of Bylaws.** These Bylaws may be amended only by a majority vote of the Board at any duly posted meeting of the Board for which notice of consideration of the proposed amendment has been properly given under the Open Meetings Act. At least every four years, these Bylaws shall receive a full review to determine necessity and adequacy of their need.

**TAB 4**



## Memorandum

TRS Compliance

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To: Board of Trustees

From: Heather Traeger, General Counsel & Chief Compliance Officer

Cc: Brian Guthrie, Executive Director

Date: November 17, 2023

Re: Revisions to the TRS Key Employee Determination Resolution

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A “Key Employee” is an employee who has been determined by the Board as one who exercises significant decision-making or fiduciary authority by virtue of the position he or she holds with TRS. A Key Employee is subject to special requirements under the Employee Ethics Policy and TRS Trading Policy for Employees and Certain Contractors.

Legal & Compliance is proposing the following changes to the TRS Key Employee Determination Resolution: 1) add the title “Assistant Deputy Director” to reflect the changes within the Executive Group; 2) remove the title “Chief Strategy Officer” to reflect the changes within the Strategy Office Group; 3) remove the title “Deputy Chief Information Officer” to better conform with TRS’ existing management structure; and 4) non-substantive “clean-up” edits.



~~July 15, 2022~~ December 7, 2023

**Teacher Retirement System of Texas  
Board of Trustees  
Resolution Adopting Revised TRS Key Employee Determinations**

**Whereas**, In accordance with Government Code Section 825.212 and the Employee Ethics Policy, as revised from time to time, the Board of Trustees of the Teacher Retirement System of Texas (the “Board”) has authority to determine employees who exercise significant fiduciary authority (“key employees”); and

**Whereas**, The Board desires to adopt the following determinations of key employees; now, therefore be it

**Resolved**, That the following positions are determined to be key employees and their current and future incumbents subject to all applicable requirements for key employees:

<b>Title</b>
Executive Director
Deputy Director
<del>Assistant Deputy Director</del>
Chief Investment Officer
Chief Benefits Officer
Chief Financial Officer
Deputy Chief, Financial Officer
General Counsel
Chief Audit Executive
Chief Information Officer
<del>Deputy Chief Information Officer</del>
Chief Health eCare Officer
<del>Chief Strategy Officer</del>
Senior Director, of Investment Accounting

**Further resolved**, That all employees who hold a voting position on the Internal Investment Committee at any time during a reporting period are determined to be key employees subject to all applicable requirements for key employees;



**Further resolved**, That all Investment Management Division employees who hold the working title of Director or higher during a reporting period are determined to be key employees and subject to all applicable requirements for key employees; and

**Further resolved**, That all employees who have authority to approve or execute securities trades in the TRS order management system during a reporting period are determined to be key employees and subject to all applicable requirements for key employees.

**Further resolved**, That all employees who hold authority during a reporting period under the Board's General Authority Resolution, through direct delegation from the Board, by designation of the Executive Director under the General Authority Resolution, or otherwise, are hereby determined to be key employees and subject to all applicable requirements for key employees;

**Further resolved**, That, in addition to the authority granted under the Board's General Authority Resolution, the Executive Director is authorized to designate, upon notice to the General Counsel, an employee not identified above to be a supplemental key employee if the Executive Director determines that it would be prudent for TRS to have the employee subject to the key employee requirements because of the influence the employee exercises, the nature of the employee's job, the information to which the employee has access, or another appropriate reason; at the next meeting of the Board after any supplemental key employee designations, the Executive Director shall notify the Board of the designations for the Board to consider ratification of the designations; and

**Further resolved**, That the foregoing resolutions and all applicable key employee requirements, including submitting enhanced disclosures required by the Employee Ethics Policy, ~~are effective for the 2014 reporting year and~~ shall remain effective until modified by the Board.



**December 7, 2023**

**Teacher Retirement System of Texas  
Board of Trustees  
Resolution Adopting Revised TRS Key Employee Determinations**

**Whereas**, In accordance with Government Code Section 825.212 and the Employee Ethics Policy, as revised from time to time, the Board of Trustees of the Teacher Retirement System of Texas (the “Board”) has authority to determine employees who exercise significant fiduciary authority (“key employees”); and

**Whereas**, The Board desires to adopt the following determinations of key employees; now, therefore be it

**Resolved**, That the following positions are determined to be key employees and their current and future incumbents subject to all applicable requirements for key employees:

<b>Title</b>
Executive Director
Deputy Director
Assistant Deputy Director
Chief Investment Officer
Chief Benefit Officer
Chief Financial Officer
Deputy Chief, Financial Officer
General Counsel
Chief Audit Executive
Chief Information Officer
Chief Health Care Officer
Senior Director, Investment Accounting

**Further resolved**, That all employees who hold a voting position on the Internal Investment Committee at any time during a reporting period are determined to be key employees subject to all applicable requirements for key employees;



**Further resolved,** That all Investment Management Division employees who hold the working title of Director or higher during a reporting period are determined to be key employees and subject to all applicable requirements for key employees; and

**Further resolved,** That all employees who have authority to approve or execute securities trades in the TRS order management system during a reporting period are determined to be key employees and subject to all applicable requirements for key employees.

**Further resolved,** That all employees who hold authority during a reporting period under the Board's General Authority Resolution, through direct delegation from the Board, by designation of the Executive Director under the General Authority Resolution, or otherwise, are hereby determined to be key employees and subject to all applicable requirements for key employees;

**Further resolved,** That, in addition to the authority granted under the Board's General Authority Resolution, the Executive Director is authorized to designate, upon notice to the General Counsel, an employee not identified above to be a supplemental key employee if the Executive Director determines that it would be prudent for TRS to have the employee subject to the key employee requirements because of the influence the employee exercises, the nature of the employee's job, the information to which the employee has access, or another appropriate reason; at the next meeting of the Board after any supplemental key employee designations, the Executive Director shall notify the Board of the designations for the Board to consider ratification of the designations; and

**Further resolved,** That the foregoing resolutions and all applicable key employee requirements, including submitting enhanced disclosures required by the Employee Ethics Policy, shall remain effective until modified by the Board.

**TAB 5**



# Legal & Compliance

Employment after Retirement  
Updates: TRS Rules 31.5 and 31.6



**Heather Traeger, General Counsel**  
**Nicholas Gonzalez, Assistant  
General Counsel**

Dec. 7, 2023



In 2021, the 87<sup>th</sup> Texas Legislature substantially changed TRS EAR laws. TRS overhauled its EAR rules in response:

## LEGISLATIVE CHANGES

- Jan. 1, 2021
- “Three Strikes”
- New EAR and Surcharge Exceptions
- New EAR exception combinations

## EAR RULES RESTRUCTURING

- Repealed all existing EAR rules
- Adopted 18 new EAR rules and one amended rule

## IMPLEMENTATION

- New rules came into effect Nov. 1, 2021
- One issue has been discovered in two EAR rules regarding the “three strikes” process

# Current TRS Rules 31.5 and 31.6 and Government Code 824.601(b-3)

## TRS Rules 31.5 & 31.6

**TRS Rule 31.5(a):** “A service retiree with an effective date of retirement after January 1, 2021, shall only forfeit the service retiree's monthly annuity payment based on the service retiree's employment by a Texas public educational institution during a calendar month **if the retiree has previously received** the warnings required by subsections (b) and (c) of this section.”

**TRS Rule 31.6(a):** “A service retiree **who receives a second EAR warning** as provided in §31.5 of this title (relating to Notice and Repayment Requirements for Certain Service Retirees) shall pay to TRS...”

## Government Code 824.601

**Section 824.601(b-3):** “A retiree under Section 824.202 is subject to [forfeiture of the retiree’s annuity] only if the retirement system **first issues** the following notices to the retiree:

(1) with respect to the first occurrence of the retiree's employment that does not qualify for an exception under Section 824.602, the system **issued a written warning** notifying the retiree of that fact; and

(2) in a month following the month in which the system issued the warning described by Subdivision (1) and with respect to a subsequent occurrence of the retiree's continued employment that does not qualify for an exception under Section 824.602, **the system issued a written notice...**”

# Proposed TRS Rules 31.5 and 31.6 and Government Code 824.601(b-3)

## TRS Rules 31.5 & 31.6

**TRS Rule 31.5(a):** “A service retiree with an effective date of retirement after January 1, 2021, shall only forfeit the service retiree's monthly annuity payment based on the service retiree's employment by a Texas public educational institution during a calendar month **if TRS has previously issued** the warnings required by subsections (b) and (c) of this section **to the retiree.**”

**TRS Rule 31.6(a):** “**If TRS issues a second EAR warning** as provided in §31.5 of this title (relating to Notice and Repayment Requirements for Certain Service Retirees) **to a service retiree, the service retiree** shall pay to TRS...”

## Government Code 824.601

**Section 824.601(b-3):** “A retiree under Section 824.202 is subject to [forfeiture of the retiree's annuity] only if the retirement system **first issues** the following notices to the retiree:

(1) with respect to the first occurrence of the retiree's employment that does not qualify for an exception under Section 824.602, the system **issued a written warning** notifying the retiree of that fact; and

(2) in a month following the month in which the system issued the warning described by Subdivision (1) and with respect to a subsequent occurrence of the retiree's continued employment that does not qualify for an exception under Section 824.602, **the system issued a written notice...**”

## Staff Recommends Adopting Proposed TRS Rules 31.5 and 31.6 without changes

Oct. 27, 2023

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- TRS Rules 31.5 and 31.6 were published for comment in the Texas Register.

Nov. 27, 2023

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- The public comment period ends. TRS received no public comments on the proposed rules.

Feb. 1, 2024

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- The proposed effective date for TRS Rules 31.5 and 31.6 if the board approves adoption.



Legal & Compliance

## Memorandum

**DATE:** Dec. 7, 2023

**TO:** Policy Committee of the TRS Board of Trustees (“Policy Committee”)

**FROM:** Heather Traeger, General Counsel & Chief Compliance Officer

**THROUGH:** Brian Guthrie, Executive Director

**RE:** Proposed Amendment: 34 Texas Administrative Code § 31.5 and § 31.6

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### **Requested Action**

TRS Staff asks the Policy Committee to recommend that the Board of Trustees (“Board”) adopt the following rules relating to employment after retirement (“EAR”) without changes to the proposed text as published in the Oct. 27, 2023 issue of the *Texas Register*.

- § 31.5. Notice and Forfeiture Requirements for Certain Service Retirees
- § 31.6. Second EAR Warning Payments

### **Background and Reason for the Proposed Amended Rules**

At the Sept. 14, 2023 policy committee meeting, TRS Staff asked the Policy Committee to authorize publication in the *Texas Register* of proposed TRS Rule § 31.5 (relating to Notice and Forfeiture Requirements for Certain Service Retirees) and TRS Rule § 31.6 (relating to Second EAR Warning Payments). The Policy Committee authorized publication and the proposed rule was published in the *Texas Register* on Oct. 27, 2023 (48 TexReg 6350).

As of the date of this memorandum, TRS has not received any public comments on the proposed rule. If TRS receives public comments on the proposed rule after the date of this memorandum and prior to the Nov. 27, 2023 deadline for filing public comments with TRS, TRS Staff will address such comments at the Dec. 7, 2023 Policy Committee meeting or, if necessary, the February Policy Committee meeting.

### **Summary of Proposed Amended Rule**

TRS Staff recommends amending TRS Rules 31.5 and 31.6 to update each rule so that they conform with statutory changes made to TRS' EAR notice requirements under Government Code § 824.601.

In 2021, the Texas Legislature passed House Bill 1585 which added, among other provisions, a notice procedure (also called a “three strikes” procedure) that ensured TRS would issue at least two warnings to a TRS retiree before that retiree would forfeit his or her entire annuity for a month because the retiree exceeded the limits on employment after retirement during that month.

Importantly, this notice procedure requires that a TRS retiree cannot be subject to a second warning (and the possible dollar-for-dollar partial forfeiture associated with a second warning) until the month after the month TRS issues a first warning to a TRS retiree for exceeding the limits on EAR. Further, a TRS retiree cannot be subject to mandatory full forfeiture of his or her annuity until the month after the month TRS issues the second warning letter. These requirements are clear in the statute.

However, TRS Rules 31.5 and 31.6 currently provide, effectively, that a TRS retiree is not subject to a second warning until the retiree receives, rather than TRS issues, a first warning. Further, the rules provide that a TRS retiree is not subject to a mandatory forfeiture until the retiree receives, rather than TRS issues, both required notices.

By requiring that the retiree receive, rather than TRS issue, these EAR notices before the retiree can be subject to the next level of EAR forfeiture, TRS Rules 31.5 and 31.6 are in conflict with current law. In addition, the receipt, rather than issue, standard creates a substantial administrative hurdle for TRS in administering the EAR “three strikes” procedure.

Specifically, TRS sends EAR notices to retirees by both first class and certified mail to the retiree's current mailing address on file with TRS to ensure that the retirees timely receive their EAR notices. However, if a retiree did not maintain an accurate current mailing address with TRS, and TRS was unable to locate (or at least was delayed in locating) the retiree, the retiree could arguably not be subject to the next EAR notice and potentially full forfeiture until TRS receives a current mailing address for the member.

In addition, because the month TRS issues an EAR notice can be different from the month a TRS retiree receives that notice, the month in which a TRS retiree is subject to the next level of EAR forfeiture could, in some cases, be ambiguous even if the retiree receives the EAR notice.

### **Conclusion**

For these reasons, TRS Staff recommends adopting the amendments to TRS Rules 31.5 and 31.6 without changes in order to conform the rules with current statutory language. The amended rules, if adopted, will be submitted to the Texas Register later in December and become effective on Feb. 1, 2024.

The proposed language of the amended rules is attached as Appendix A, and a redlined version of the amendments to the rules is attached as Appendix B.

## APPENDIX A

### §31.5 Notice and Forfeiture Requirements for Certain Service Retirees

(a) A service retiree with an effective date of retirement after January 1, 2021, shall only forfeit the service retiree's monthly annuity payment based on the service retiree's employment by a Texas public educational institution during a calendar month if TRS has previously issued the warnings required by subsections (b) and (c) of this section to the retiree.

(b) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter (relating to Employment after Retirement Exceptions), TRS shall issue a written EAR warning to the service retiree notifying the retiree of this fact. The EAR warning under this subsection may address multiple months of the service retiree's employment.

(c) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the service retiree the warning under subsection (b) of this section, then TRS shall issue a second EAR warning to the service retiree that:

(1) notifies the service retiree of this fact; and

(2) requires the service retiree to pay TRS an amount equal to the lesser of the total amount of either:

(A) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(B) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by §31.6 of this title (relating to Second EAR Warning Payments).

(d) The EAR warning under subsection (c) of this section may address multiple months of the service retiree's employment.

(e) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the retiree the second EAR warning under subsection (c) of this section, the service retiree is not entitled to receive a monthly annuity payment for any such month and TRS shall collect any annuity payments the service retiree received to which the service retiree was not entitled.

(f) If TRS determines after issuing an EAR warning under subsections (b) or (c) of this section that the service retiree's employment by a Texas public educational institution did not qualify for an exception under Subchapter B of this chapter and that employment occurred in a month prior to or during the month TRS issued such a warning but was not included in the warning, then TRS shall:

## APPENDIX A

(1) issue an EAR warning in accordance with subsection (b) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or an earlier month; or

(2) issue an EAR warning and request for payment under subsection (c) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or in an earlier month that was also after the month TRS issued the EAR warning under subsection (b) of this section.

(g) If a service retiree appeals a TRS determination regarding the service retiree's employment with a Texas public educational institution during a month or months that TRS included in an EAR warning under subsection (b) or (c) of this section, the EAR warning shall still be considered to have been issued by TRS unless the service retiree's appeal contests every month addressed by the applicable warning. If the service retiree contests the TRS determination for every month included in an EAR warning, that EAR warning shall not be considered to have been issued during the pendency of the service retiree's appeal.

(h) If a service retiree prevails on an appeal of every month included in an EAR warning under subsection (b) or (c) of this section, then TRS shall rescind the EAR warning. If the service retiree's appeal does not prevail on any month included in an EAR warning under subsection (b) or (c) of this section, then the EAR warning shall be reinstated and TRS shall adjust the amounts owed by the service retiree to TRS, if any, for months after the issuance of the reinstated EAR warning in which TRS determined the service retiree's employment by a Texas public educational institution did not qualify for an exception to the limits on EAR as provided by Subchapter B of this chapter.

(i) TRS shall consider an EAR warning under this section to have been issued on the date TRS sends the warning to the service retiree.

### **§31.6. Second EAR Warning Payments**

(a) If TRS issues a second EAR warning as provided in §31.5 of this title (relating to Notice and Repayment Requirements for Certain Service Retirees) to a service retiree, the service retiree shall pay to TRS an amount equal to the lesser of either:

(1) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(2) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by this section.

(b) The amount in subsection (a)(2) of this section shall only include all compensation earned by the service retiree based on the service retiree's employment with a Texas public educational institution during a month subject to the second EAR warning regardless of when such an amount is paid to the service retiree. The amount shall not include:

## APPENDIX A

(1) compensation paid to the service retiree during the applicable months unless the service retiree also earned the compensation based on the service retiree's employment with a Texas public educational institution during a month subject to the second warning;

(2) compensation earned by the service retiree in a position that qualifies for the exception under §31.16 of this title (relating to Federally-funded COVID-19 Personnel); and

(3) compensation paid to the service retiree that would not qualify as creditable compensation if paid to an active member by an employer for the same services.

(c) A service retiree may elect to pay the greater of the two amounts described by subsection (a) of this section. If a retiree elects to pay the greater amount, the retiree must notify TRS of this election in writing.

(d) If an employer adjusts the compensation earned by a service retiree in a month subject to a second EAR warning payment under this section but does not adjust the hours or days worked by the retiree relating to that compensation, the amount due shall be adjusted for that payment, and TRS shall request or return any amounts necessary to correct the payment so long as the adjustment is received no later than 12 months after the end of the school year in which the compensation was earned.

## APPENDIX B

### §31.5 Notice and Forfeiture Requirements for Certain Service Retirees

(a) A service retiree with an effective date of retirement after January 1, 2021, shall only forfeit the service retiree's monthly annuity payment based on the service retiree's employment by a Texas public educational institution during a calendar month if TRS [~~the retiree~~] has previously issued [~~received~~] the warnings required by subsections (b) and (c) of this section to the retiree.

(b) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter (relating to Employment after Retirement Exceptions), TRS shall issue a written EAR warning to the service retiree notifying the retiree of this fact. The EAR warning under this subsection may address multiple months of the service retiree's employment.

(c) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the service retiree the warning under subsection (b) of this section, then TRS shall issue a second EAR warning to the service retiree that:

(1) notifies the service retiree of this fact; and

(2) requires the service retiree to pay TRS an amount equal to the lesser of the total amount of either:

(A) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(B) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by §31.6 of this title (relating to Second EAR Warning Payments).

(d) The EAR warning under subsection (c) of this section may address multiple months of the service retiree's employment.

(e) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the retiree the second EAR warning under subsection (c) of this section, the service retiree is not entitled to receive a monthly annuity payment for any such month and TRS shall collect any annuity payments the service retiree received to which the service retiree was not entitled.

(f) If TRS determines after issuing an EAR warning under subsections (b) or (c) of this section that the service retiree's employment by a Texas public educational institution did not qualify for an exception under Subchapter B of this chapter and that employment occurred in a month prior to or during the month TRS issued such a warning but was not included in the warning, then TRS shall:

## APPENDIX B

(1) issue an EAR warning in accordance with subsection (b) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or an earlier month; or

(2) issue an EAR warning and request for payment under subsection (c) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or in an earlier month that was also after the month TRS issued the EAR warning under subsection (b) of this section.

(g) If a service retiree appeals a TRS determination regarding the service retiree's employment with a Texas public educational institution during a month or months that TRS included in an EAR warning under subsection (b) or (c) of this section, the EAR warning shall still be considered to have been issued by TRS unless the service retiree's appeal contests every month addressed by the applicable warning. If the service retiree contests the TRS determination for every month included in an EAR warning, that EAR warning shall not be considered to have been issued during the pendency of the service retiree's appeal.

(h) If a service retiree prevails on an appeal of every month included in an EAR warning under subsection (b) or (c) of this section, then TRS shall rescind the EAR warning. If the service retiree's appeal does not prevail on any month included in an EAR warning under subsection (b) or (c) of this section, then the EAR warning shall be reinstated and TRS shall adjust the amounts owed by the service retiree to TRS, if any, for months after the issuance of the reinstated EAR warning in which TRS determined the service retiree's employment by a Texas public educational institution did not qualify for an exception to the limits on EAR as provided by Subchapter B of this chapter.

(i) TRS shall consider an EAR warning under this section to have been issued on the date TRS sends the warning to the service retiree.

### §31.6. Second EAR Warning Payments

(a) If TRS issues [A service retiree who receives] a second EAR warning as provided in §31.5 of this title (relating to Notice and Repayment Requirements for Certain Service Retirees) to a service retiree, the service retiree shall pay to TRS an amount equal to the lesser of either:

(1) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(2) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by this section.

(b) The amount in subsection (a)(2) of this section shall only include all compensation earned by the service retiree based on the service retiree's employment with a Texas public educational institution during a month subject to the second EAR warning regardless of when such an amount is paid to the service retiree. The amount shall not include:

## APPENDIX B

(1) compensation paid to the service retiree during the applicable months unless the service retiree also earned the compensation based on the service retiree's employment with a Texas public educational institution during a month subject to the second warning;

(2) compensation earned by the service retiree in a position that qualifies for the exception under §31.16 of this title (relating to Federally-funded COVID-19 Personnel); and

(3) compensation paid to the service retiree that would not qualify as creditable compensation if paid to an active member by an employer for the same services.

(c) A service retiree may elect to pay the greater of the two amounts described by subsection (a) of this section. If a retiree elects to pay the greater amount, the retiree must notify TRS of this election in writing.

(d) If an employer adjusts the compensation earned by a service retiree in a month subject to a second EAR warning payment under this section but does not adjust the hours or days worked by the retiree relating to that compensation, the amount due shall be adjusted for that payment, and TRS shall request or return any amounts necessary to correct the payment so long as the adjustment is received no later than 12 months after the end of the school year in which the compensation was earned.

**TAB 6**



# Legal & Compliance

Vendor Protest, Dispute  
Resolution, and Hearing: Rule  
§51.2



**Heather Traeger, General Counsel**  
**Ronnie Bounds, Assistant General  
Counsel**  
Dec. 7, 2023



## Project Goals and Required Actions

### GOALS

- Update TRS' vendor protest and appeals rule to align with procurement and contracting processes and to make the process more timely and efficient

### VENDOR PROTEST RULE ACTION

- **Repeal** existing Vendor Protest rule
- **Adopt** new Vendor Protest rule

### IMPLEMENTATION

- New rule comes into effect May 2024

### Key Changes to the Vendor Protest Rule

- Nonsubstantive and formatting changes to address clarity and readability
- Identifies TRS Legal & Compliance (L&C) as responsible for the management of the protest
- Provides greater clarity on timeliness for vendors to submit a protest
- Ends the appeal process at the executive director. This update will streamline the appeal process and provide a more timely resolution for TRS and for vendors

### Next steps

- Submit rule proposals to *Texas Register*
- Rules shall remain posted for public comment for 30 days
- Present to the TRS Board in April for adoption
- If adopted, rules intended to be effective May 2024



## Legal & Compliance

# Memorandum

**DATE:** November 17, 2023

**TO:** TRS Board of Trustees

**FROM:** Heather Traeger, General Counsel

**THROUGH:** Brian Guthrie, Executive Director

**RE:** Proposed Repeal: TRS Rule § 51.2 (Vendor Protests, Dispute Resolution, and Appeals);  
and  
Proposed New: TRS Rule § 51.2 (Vendor Protests and Appeals).

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### **Requested Action**

TRS Staff asks the Board of Trustees to authorize publication of the following in the *Texas Register*:

- A proposal to repeal rule § 51.2 (relating to Vendor Protests, Dispute Resolution, and Appeals) under Chapter 51 of TRS Rules (relating to General Administration)
- A proposal for new rule § 51.2 (relating to Vendor Protests and Appeals) under Chapter 51 of TRS Rules (relating to General Administration)

### **Background and Reason for the Proposed Repealed, and New Rules**

TRS Staff recommends an update to TRS' existing vendor protests, dispute resolution, and hearing rule to align with procurement and contracting processes.

Staff proposes the repeal of the existing vendor protest rule under Chapter 51 of TRS Rules, and the adoption of a new vendor protest rule. While the new Chapter 51 rule incorporates many of

the substantive provisions of TRS' existing vendor protest rule, the new vendor protest rule also removes inefficiencies from, and provides greater clarity to, the vendor protest and appeal process.

The proposed new rule makes several key changes to TRS' vendor protest rules:

- The title of current rule § 51.2 (*Vendor Protests, Dispute Resolution, and Hearing*) has been changed to *Vendor Protests and Appeals*. The new rule title more accurately describes current (and continuing) processes regarding vendor protests and appeals.
- Current rule § 51.2 does not include section headings. Under new rule § 51.2, headings have been provided to each section to improve readability.
- Current rule § 51.2 identifies the responsibilities of various TRS personnel throughout the protest process but does not identify the position or group that is responsible for the management of the protest. Under new rule § 51.2(e), relating to *the Review and Disposition of Protests*, TRS Legal & Compliance (TRS L&C) will be responsible for the management of the protest and will coordinate TRS' disposition of the protest with the chief officer, with support provided by the P&C director.
- A definitions section has been added to new rule § 51.2 (see § 51.2(a) relating to *Definitions*).
- Current rule § 51.2(a), relating to rule purpose and applicability, has been (i) renumbered as § 51.2(b), (ii) re-formatted by separating its content into subsections to improve readability, and (iii) revised by (a) expanding the number of exceptions to the rule by including transactions in which TRS buys or sells securities (see 51.2(b)(1)(iv)), and (b) adding appeals to the scope of the rule's coverage (which captures current practices but is not expressly stated in current rule § 51.2(a)).
- Current rule § 51.2(b) (relating to the filing of a vendor protest) is revised by (i) renumbering it as new rule § 51.2(d), (ii) substituting TRS L&C for the chief officer as the recipient of the protest (see new rule § 51.2(d)(1)), and (iii) clarifying the deadline for filing a protest. Under current rule § 51.2(b), to be considered timely, a protesting party must file its protest "within 10 working days after the protestor *knows or should have known*, of the occurrence of the action which is protested." New rule § 51.2(d) provides

greater clarity for vendors by requiring a protest contesting (i) the solicitation be filed by the end of posted solicitation period, or (ii) the evaluation or award be filed within 10 calendar days after the notice of contract award is posted either to the ESBD, or the TRS website, as applicable (see new rule § 51.2 (d)(2)(i) &(ii)).

- Current rule § 51.2(c) (relating to the required content of a vendor protest) is revised by (i) expanding the identification of the legal authority that TRS is alleged to have violated, from the “statutory provision” to also include TRS policy, and the TRS Procurement and Contract Management Guide (Guide) (see new rule § 51.2(d)(3)(i) &(ii)), and (ii) requiring the protester to provide a precise statement of the remedy requested (see new rule § 51.2(d)(3)(vi)).
- Current rule § 51.2(e)(1)-(3), relating to the chief officer’s determination has been renumbered as new rule 51.2(e)(2)-(5).
- Current rule § 51.2(f), relating to an appeal of the chief officer’s determination, has been revised by directing that an appeal be filed in accordance with the requirements stated in the solicitation document or on the TRS website, rather than with the office of the executive director or his or her designee (see new rule § 51.2 (f)(1)).
- Current rule § 51.2(g) provides that the executive director may, in his or her discretion, refer an appeal to the Board of Trustees. New rule § 51.2(f)(4) ends the appeal process at the executive director, which will streamline the process and provide more timely resolution for TRS and for vendors (see §51.2(f)(1), *Appeal of Protest*).
- Current rule § 51.2(j) (relating to the stay of a protest or an appeal) is (i) renumbered and restated as new rule § 51.2(c), (ii) titled *Stay of Protest and Appeal*, and (iii) revised by adding guidance regarding the process of submitting a stay request to TRS.

The draft of the proposed new rule is attached as Appendix A, Proposed New Rule. Appendix B is current rule 51.2, whose content has been stricken through in its entirety.

### **Conclusion**

If the Board authorizes publication, the proposed repeal, and the proposed new rule, will be published in the *Texas Register* for public comment for at least 30 days before presentation to the Board of Trustees for final adoption.

# APPENDIX A

## Proposed New Rule § 51.2

RULE §51.2

Vendor Protests and Appeals

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- (a) Definitions. The following words and terms, when used in this rule, shall have the following meaning unless the context clearly indicates otherwise.
- (1) Appeal: A written appeal of the Determination of the Chief Officer.
  - (2) Appealing Party: A party who files an Appeal to the Determination.
  - (3) Chief Officer: The head of any business unit of TRS.
  - (4) Determination: A determination issued by the Chief Officer in response to a Protest.
  - (5) Director of Procurement & Contracts (P&C Director): the head of the TRS division responsible for overseeing the procurement of goods and services.
  - (6) Executive Director: Appointed by the TRS Board of Trustees pursuant to Tex. Gov't Code § 825.202.
  - (7) Final Decision: A decision issued by the TRS Executive Director in response to an Appeal.
  - (8) Interested Parties: Vendors who submitted a bid, offer, or proposal, as applicable, in response to the subject procurement.
  - (9) Protest: A process initiated in accordance with this Rule by a Vendor who believes they have been aggrieved in connection with a solicitation, evaluation, or award of a contract.
  - (10) Protesting Party: A party who files a Protest.
  - (11) Solicitation Documents: all documents (including Invitation for Bids (IFB), Request for Offers (RFO), Request for Proposals (RFP), and Request for Qualifications (RFQ)) requesting responses from Vendors to provide specified goods or services, or both. Solicitation Documents also include any addenda posted by TRS to the Electronic State Business Daily (ESBD) or the TRS website, as applicable, for the subject procurement.
  - (12) TRS Legal Counsel: the TRS General Counsel or any attorney designated by TRS General Counsel.
  - (13) TRS Legal & Compliance (TRS L&C): The TRS legal and compliance division.

# APPENDIX A

## Proposed New Rule § 51.2

(14) Vendor: An individual, company, partnership, corporation, or other entity that has filed a response to a TRS solicitation.

(b) Purpose. The purpose of this rule is to provide a procedure for a Vendor to Protest or Appeal, if applicable, the process by which TRS purchases goods, services, or both.

(1) Exceptions. This subchapter does not apply to protests of purchases made by:

(a) the Texas Facilities Commission (Facilities Commission) on behalf of TRS, which are addressed in 1 Texas Administrative Code Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution).

(ii) the Department of Information Resources (DIR) on behalf of TRS, which are addressed in 1 Texas Administrative Code Chapter 201, §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures).

(iii) the Comptroller of Public Accounts (Comptroller's Office) on behalf of TRS, which are addressed in 34 Texas Administrative Code Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals).

(iv) TRS, for transactions in which TRS buys or sells securities (whether publicly traded or privately issued) under the authority of section 825.302 of the Tex. Gov't Code (relating to Investment of Assets), as well as any other transactions not subject to state purchasing rules.

(2) The rules of the Facilities Commission, DIR, and the Comptroller's Office may be accessed through the website of the Office of the Secretary of State, Texas Register Division located at: [www.sos.state.tx.us/tac/index.shtml](http://www.sos.state.tx.us/tac/index.shtml).

(c) Stay of Protest or Appeal. If a timely Protest or Appeal is filed, the Protesting Party or the Appealing Party may request in writing that TRS not proceed further with the solicitation or with the award of the contract. In support of the request, the Protesting Party or Appealing Party is required to show why a stay is necessary and that harm to TRS will not result from the stay. If the Executive Director determines that it is in the interest of TRS not to proceed with the solicitation or contract award, the Executive Director may make such a decision in writing and partially or fully suspend procurement or contract activity. Any request for a stay must be submitted in accordance with the requirements stated in the Solicitation Document (relating to Vendor Protests and Appeals) or on the TRS website, as applicable.

(d) Protest Procedures.

# APPENDIX A

## Proposed New Rule § 51.2

- (1) A Vendor who believes they have been aggrieved in connection with a solicitation, evaluation, or award of a contract may formally Protest to TRS. Such Protest must be in writing and timely received by TRS L&C in accordance with the instructions provided in the Solicitation Document or on the TRS website, as applicable. Copies of the Protest must be concurrently mailed or delivered by the Protesting Party to all other Interested Parties.
  - (2) To be considered timely, the Protest must be filed:
    - (i) by the end of the posted solicitation period, if the Protest concerns the Solicitation Documents or actions associated with the publication of the Solicitation Documents; or
    - (ii) no later than 10 calendar days after the notice of contract award is posted to either the ESD, or the TRS website, as applicable, if the Protest concerns the evaluation or award. Notice of Awards posted to the TRS website may be accessed at <https://www.trs.texas.gov/>.
  - (3) A formal Protest must be sworn and contain:
    - (i) a specific identification of the State of Texas statutory provision(s), TRS policy, or TRS Procurement and Contract Management Guide (Guide) requirement that the action complained of is alleged to have violated;
    - (ii) a specific description of each act alleged to have violated a State of Texas statutory provision(s), TRS regulatory policy, or Guide requirement;
    - (iii) a precise statement of the relevant facts;
    - (iv) an identification of the issue or issues to be resolved;
    - (v) argument and authorities in support of the Protest;
    - (vi) a precise statement of the remedy requested by the Protesting Party; and
    - (vii) a statement that copies of the Protest have been mailed or delivered to all other Interested Parties. Upon request, TRS will provide the Protesting Party with a list of Interested Parties as reflected in TRS records.
- (e) Review and Disposition of Protests.
- (1) TRS L&C will be responsible for management of the Protest and will coordinate TRS' disposition of the Protest with the Chief Officer, with support provided by the P&C Director.
  - (2) The Chief Officer may:

# APPENDIX A

## Proposed New Rule § 51.2

- (i) dismiss the Protest if the Chief Officer determines the Protest was not timely filed or does not meet the requirements of section (d) of this rule, relating to Protest Procedures; or
- (ii) settle and resolve a timely Protest by mutual agreement of TRS and the Protesting Party.

(3) If the Chief Officer does not dismiss or resolve the Protest, the Chief Officer may, in his or her sole discretion, solicit written responses to the Protest from other Interested Parties.

(4) If the Protest is not dismissed or resolved under section (e)(2), the Chief Officer will issue to the Protesting Party and other Interested Parties a written Determination as to whether a violation of State of Texas statutes, TRS regulatory policies, or Guide requirements has occurred.

(5) The Determination will set forth the reasons for the Determination, and any appropriate remedial action, if applicable. Such remedial action, if applicable, may include, but is not limited to, declaring the procurement void; reversing the award and awarding the contract to a different Interested Party; or re-advertising the procurement.

### (f) Appeal of Protest

(1) The Protesting Party or an Interested Party may Appeal the Determination to the Executive Director. The written Appeal must be received in accordance with the requirements stated in the Solicitation Document (relating to Vendor Protests and Appeals) or on the TRS website, as applicable, no later than ten working days after the date of the Determination. The Appeal is limited to a review of the Determination.

(2) The Appealing Party must concurrently mail or deliver copies of the Appeal to all other Interested Parties and must include an affidavit that such copies have been provided.

(3) The TRS L&C shall review the Protest, the Determination, and the Appeal and prepare a written opinion with a recommendation to the Executive Director.

(4) The Executive Director will issue a Final Decision denying, affirming, or modifying the Determination. A Final Decision issued by the Executive Director shall be the final administrative action of TRS.

## APPENDIX B- CURRENT RULE

RULE ~~§51.2~~

~~Vendor Protests, Dispute Resolution, and Hearing~~

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~~(f) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Teacher Retirement System of Texas (TRS). Protests of purchases made by the Texas Facilities Commission (facilities commission) on behalf of TRS are addressed in 1 Texas Administrative Code Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution). Protests of purchases made by the Department of Information Resources (DIR) on behalf of TRS are addressed in 1 Texas Administrative Code Chapter 201, §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by Texas Procurement and Support Services of the Comptroller of Public Accounts (comptroller's office) on behalf of TRS are addressed in 34 Texas Administrative Code Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals). The rules of the facilities commission, DIR, and the comptroller's office are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: [www.sos.state.tx.us/tac/index.shtml](http://www.sos.state.tx.us/tac/index.shtml).~~

~~(c) A formal protest must be sworn and contain:~~

- ~~–(1) a specific identification of the statutory provision(s) that the action complained of is alleged to have violated;~~
- ~~–(2) a specific description of each act alleged to have violated the statutory provision(s) identified in paragraph (1) of this subsection;~~
- ~~–(3) a precise statement of the relevant facts;~~
- ~~–(4) an identification of the issue or issues to be resolved;~~
- ~~–(5) argument and authorities in support of the protest; and~~
- ~~–(6) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.~~

~~(d) The chief officer shall have the authority, prior to appeal to the executive director or his designee, to settle and resolve the dispute concerning the solicitation or award of a contract. The chief officer may solicit written responses to the protest from other interested parties.~~

- ~~–(1) If the chief officer determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and interested parties by letter which sets forth the reasons for the determination.~~
- ~~–(2) If the chief officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested~~

parties by letter which sets forth the reasons for the determination and any appropriate remedial action.

~~-(3) If the chief officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action. Such remedial action may include, but is not limited to, declaring the purchase void; reversing the award; and re-advertising the purchase using revised specifications.~~

~~(f) The chief officer's determination on a protest may be appealed by an interested party to the executive director or his designee. An appeal of the chief officer's determination must be in writing and must be received in the office of the executive director or his designee no later than ten working days after the date of the chief officer's determination. The appeal shall be limited to review of the chief officer's determination. Copies of the appeal must be mailed or delivered by the appealing party to other interested parties and must contain an affidavit that such copies have been provided.~~

~~(g) The general counsel shall review the protest, chief officer's determination, and the appeal and prepare a written opinion with recommendation to the executive director or his designee. The executive director or his designee may, in his or her discretion, refer the matter to the Board of Trustees at a regularly scheduled open meeting or issue a final written determination.~~

~~(h) When a protest has been appealed to the executive director or his designee under subsection (f) of this section and has been referred to the Board of Trustees by the executive director or his designee under subsection (g) of this section, the following requirements shall apply:~~

~~-(1) Copies of the appeal, responses of interested parties, if any, and general counsel recommendation shall be mailed to the Board members and interested parties. Copies of the general counsel's recommendation and responses of interested parties shall be mailed to the appealing party.~~

~~-(2) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the office of the executive director or his designee at least 48 hours in advance of the open meeting.~~

~~-(3) The Board of Trustees may consider oral presentations and written documents presented by staff, the appealing party, and interested parties. The chairman shall set the order and amount of time allowed for presentations.~~

~~-(4) The Board of Trustees' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.~~

~~(i) Unless good cause for delay is shown or the executive director or his designee determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.~~

~~(j) In the event of a timely protest or appeal under this section, a protestor or appellant may request in writing that TRS not proceed further with the solicitation or with the award of the contract. In support of the request, the protestor or appellant is required to show why a stay is necessary and that harm to TRS will not result from the stay. If the executive director determines that it is in the interests of TRS~~

~~not to proceed with the contract, the executive director may make such a determination in writing and partially or fully suspend contract activity.~~

~~(k) A decision issued either by the Board of Trustees in open meeting, or in writing by the executive director or his designee, shall be the final administrative action of TRS.~~

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