



**PENSION REVIEW BOARD OF TEXAS
BOARD MEETING**

AGENDA

**Friday, November 15, 2019 – 8:30 AM
Capitol Extension, Committee Room E1.012
1100 N. Congress Avenue, Austin, Texas 78701**

The Board may deliberate and take action on any of the following items:

1. Meeting called to order
2. Roll call of Board members
3. Discuss and consider Board administrative matters, including the following items – Chair Leibe
 - A. **TAB 1** Approval of the October 17, 2019 Board meeting minutes
 - B. Consider excusing the absence of Board members from the October 17, 2019 Board meeting
 - C. Recognition of outgoing board member
4. Legislative Committee – Discuss and consider the following items – Chair Leibe
 - A. **TAB 2** Consider approval to publish the rules proposed in Texas Administrative Code, Title 40, Part 17, Chapter 609, relating to Public Retirement System Investment Expense Reporting, in the *Texas Register* for public comment
 - B. **TAB 3** PRB rule review – Texas Administrative Code, Title 40, Part 17, Chapters 601, 603, 604, 605 and 607
5. Review and discuss report from the Executive Director on the following matters – Anumeha Kumar
 - A. Staff update
6. Call for future PRB agenda items – Chair Leibe
7. Date and location of next PRB meeting – TBD
8. Invitation for public comment
9. Adjournment

NOTE: Persons with disabilities who plan to attend this meeting and who may need special assistance are requested to contact Mr. Wes Allen at (800) 213-9425/ (512) 463-1736 three to five (3-5) working days prior to the meeting date so that appropriate arrangements can be made. The Board may go into executive/closed session regarding any item on the agenda if permitted under the Open Meetings Act, Texas Government Code Annotated, Chapter 551.

TAB 1



**Minutes
October 17, 2019**

1. Meeting called to order (0:06)

The third meeting of 2019 of the Texas Pension Review Board (PRB) began on Thursday, October 17, 2019, at 8:10 a.m. in the Capitol Extension, Committee Room E1.012, 1100 N. Congress Avenue, Austin, Texas 78701.

2. Roll call of Board members (0:12)

Board Members Present

Chair Stephanie Leibe
Vice Chair Keith Brainard
Marcia Dush

Rossy Fariña-Strauss
Shari Shivers

A quorum being present, the meeting was called to order by Chair Stephanie Leibe.

3. Discuss and consider Board administrative matters, including the following items – Chair Leibe (0:28)

A. Approval of the June 27, 2019 Board meeting minutes (0:30)

Chair Leibe held a motion to suspend the reading of the minutes of the June 27, 2019 PRB meeting and approve them as circulated.

The motion was made by Mr. Brainard and seconded by Ms. Dush.

The motion passed unanimously.

B. Consider excusing the absence of Board members from the June 27, 2019 Board meeting (1:29)

Chair Leibe held a motion to excuse Ms. Fariña-Strauss from the June 27th Board meeting.

The motion was made by Ms. Dush and seconded by Mr. Brainard.

The motion passed unanimously.

C. Recognition of outgoing board member (2:00)

Tabled for the November Board meeting.

D. Introduction of new board member (2:17)

Chair Leibe introduced the new board member, Shari Shivers, and Ms. Shivers gave a brief description of her background.

4. Legislative Committee – Discuss and consider the following items – Chair Leibe (4:09)

A. Informal guidance for conducting Investment Practices and Performance Evaluations (SB 322) (4:21)

Mr. Herbold briefed the Board on the comments received from the public on the draft informal Guidance for Investment Practices and Performance Evaluations since the PRB's Actuarial Committee Meeting on September 19 and 20. Mr. Herbold discussed and the changes made to the draft, including those received from the public during and after the Actuarial Committee Meeting, as well as two options for board discussion that staff developed to clarify the definition of indirectly managing investments.

Chair Leibe opened the floor for public comment.

Mr. David Stacy, Midland Fire, stated that many funds have an existing relationship with an investment consulting firm and intended to utilize the firm to conduct the Investment Practices and Performance Evaluations.

Mr. Josh Yager, Anodos Investment Governance Advisors, offered his observations on the definition of independence of an investment consulting firm. He stated that it would be inappropriate for the existing investment consultant to conduct the Investment Practices and Performance Evaluation because they would be put in the position of critiquing their own work.

Ms. Kumar stated that the legislature permitted systems to use existing consultants to perform the evaluations so long as the consulting firms are not directly or indirectly managing assets of the system.

The Board discussed which of the two options they wanted to adopt and agreed to amend the language to read: A firm is considered to be directly or indirectly managing investments if the firm, a subsidiary, or its parent company, has assets of the system under management, or is solely responsible for selecting or terminating investment managers.

Mr. Brainard made a motion to adopt Option B as amended. The motion was seconded by Ms. Shivers.

The motion passed unanimously.

B. Informal guidance for developing a Funding Policy (SB 2224) (48:02)

Ms. Miller gave a brief background of the bill and updated the Board on the informal guidance, noting that a section on negative amortization was added by request from a board member.

Ms. Kumar informed the Board that staff was working to provide a template as part of the informal guidance and help notify plan sponsors of the funding policy requirement.

Mr. Brainard stated that he was concerned about using the words "runs contrary to the pension prefunding concept" when referring to negative amortization and provided examples of when negative amortization was not problematic.

Ms. Dush explained that the actuarial community has begun discussing the use of negative amortization and may soon discourage its use.

Mr. Brainard stated that it was not his intention to get ahead of the actuarial community but to instead urge systems to be cautious in their use of negative amortization.

Mr. Brainard motioned to adopt the informal Guidance for Developing a Funding Policy, striking the words “runs contrary to the pension prefunding concept,” and adding in its place “Plans should be careful in their use of negative amortization.” The motion was seconded by Ms. Dush.

The motion passed unanimously.

C. Rulemaking relating to fee disclosures (SB 322) (1:00:44)

Ms. Rendon provided a brief summary of the document staff prepared regarding the content of the proposed fee disclosure rules. She stated that investment management fees and commissions should be broken down by asset class, which should be included in the system’s Comprehensive Annual Financial Report (CAFR). Ms. Dush asked that the box labeled “Equity” be labeled “Public Equity” and that private debt be included with corporate bonds under “Fixed Income.”

Ms. Rendon presented recommendations for a reporting structure on how systems could report investment fees and what that level of reporting could look like in practice. The first recommendation was to distinguish between fees paid from the trust fund and fees netted from returns. The second recommendation was to require plans to report performance fees.

Ms. Rendon continued with the final recommendation, which would require plans to report brokerage commissions in a separate table, broken down by asset class.

Ms. Kumar informed the Board that this is the framework for the proposed rules and that staff will bring the draft rules to the Board at the November board meeting. Ms. Kumar assured the Board that staff will take into account any public comment before the final rules are presented to the Board early next year.

Mr. Brainard motioned to direct staff to draft rules on fee disclosures and incorporate the comments of the Board into the rules that will be presented at the November meeting. The motion was seconded by Ms. Dush.

The motion passed unanimously.

D. PRB rule review – Texas Administrative Code, Title 40, Part 17, Chapters 601, 603, 604, 605, and 607 (1:18:17)

Chair Leibe tabled this item until the November PRB meeting.

E. Retirement systems with board qualifications in statute (1:19:02)

Ms. Rendon presented staff’s research on the public retirement system board qualifications in statute. Staff found that only a small number of public retirement systems’ statutes contain education or experience qualifications for board members.

Mr. Brainard noted the lack of required qualifications for board members currently in statute and implored citizens and plans to encourage the legislature to develop a more cohesive framework for public pension plans.

5. Actuarial Committee – Discuss and consider the following matters – Keith Brainard (1:23:00)

A. Intensive actuarial reviews of the following systems (1:23:10)

Mr. Brainard invited Mr. Bryan Burnham and Mr. Kenny Herbold to present on the intensive actuarial reviews of Odessa Firemen’s Relief & Retirement Fund and Paris Firefighter’s Relief & Retirement Fund.

i. Odessa Firemen’s Relief & Retirement Fund (1:23:32)

Mr. Burnham presented a brief summary of the finalized intensive review, including recommendations made to the fund.

Ms. Dush commented on the value of benefits upon reaching full retirement eligibility and stated that employees and the City of Odessa contribute a sizable portion to Social Security and to the pension fund compared to peer systems.

Mr. Burnham provided an overview of the additions to the report that were based on information provided by the fund’s actuary in September. Due to the anticipated construction of a new fire station, the fund’s actuary projected increases in contributions as a result of an assumed increase in members in the fund.

Ms. Dush shared her concerns about the assumption of economic stability despite the likelihood of changing economic conditions in the region.

Mr. Brainard added that cities have been reporting in their CAFRs that they are paying the full actuarially determined contribution (ADC), when in reality they are not, which is a problem that ought to be addressed. He commended the City of Odessa for engaging in the review and implored the City to pay the full ADC.

ii. Paris Firefighter’s Relief & Retirement Fund (1:39:33)

Mr. Herbold summarized the finalized review and noted that negative cash flow and investment returns were of key concern, as well as the importance of educating the Paris Fire trustees in fund management. Mr. Herbold also summarized the recommendations made to the plan.

Ms. Dush stated that she had concerns about the fiduciary responsibility of board members and the prudence of investment managers in recommending investments, further stating that returns ought to be based upon realistic expectations.

Mr. Brainard stated that the members of the Actuarial Committee expressed concern that most members of the Paris Fire’s board have not completed their required MET training and encouraged them to challenge their investment consultants’ and actuaries’ performance. He added that Paris Fire’s member contributions were disproportionate to the fund’s normal cost, raised a concern about the negative cashflow that the plan has been facing for the last several years, and stated that current investment return

assumptions are too high. Mr. Brainard further stated that he would like to see the statutory references regarding fiduciary responsibility added to Paris Fire's intensive review.

Mr. Brainard entertained a motion to adopt the Odessa Fire and Paris Fire intensive reviews in the PRB's biennial report to the legislature, incorporating any changes made by the Board and technical changes.

The motion was made by Ms. Shivers and seconded by Ms. Dush.

The motion passed unanimously.

B. Actuarial Valuation Report (1:56:40)

Mr. Herbold noted an increase in the total unfunded accrued liability with a large part due to the inclusion of the December 31, 2018 and January 1, 2019 actuarial valuations received since the prior meeting. He added that amortization periods have remained relatively stable and that there are no longer any systems with a discount rate above 8%. Mr. Herbold explained that there was a new column added into the supplemental report, which noted the expected depletion date for systems.

C. Public retirement system reporting and compliance, including noncompliant retirement systems under Section 801.209 of the Texas Government Code (2:01:12)

Mr. Burnham presented the noncompliance report and assured the Board that staff was communicating with noncompliant systems to get reports in as soon as possible.

D. Update on the retirement systems subject to the Funding Soundness Restoration Plan (FSRP) requirement, including compliance (2:03:36)

Mr. Herbold provided an update on FSRPs submitted since the prior PRB meeting and apprised the board on systems that are subject to the revised FSRP requirement.

Ms. Dush noted that nearly 85% of the plans that have already submitted an FSRP were now subject to submitting a revised FSRP or were now at risk of having to formulate an FSRP were Texas Local Fire Fighters Retirement Act (TLFFRA) plans and sought clarification on how those plans got to that point. Ms. Kumar assured Ms. Dush that PRB staff would be willing to help with any research questions or data that she may need.

E. Retirement systems that require contributions based on the ADC (2:10:56)

Mr. Herbold presented a list of systems that are currently paying the full ADC, as well as a list of plans that contribute based on an ADC calculation but may not necessarily pay a full ADC each year. Mr. Herbold noted that most of the plans that are currently paying the ADC are governed by Chapter 810.

Mr. Brainard noted that very few plans required payment of the full ADC and stressed that payment of the ADC ought to be the goal of every plan and sponsor in the state.

6. Education and Research Committee – Discuss and consider the Minimum Educational Training (MET) Program for trustees and system administrators pursuant to Section 801.211 of Texas Government Code, including the following – Chair Leibe (2:15:00)

A. Receive update on MET compliance reporting (2:15:00)

Ms. Kranes reported the number of noncompliant plans and informed the members that most of those plans were less than 30 days noncompliant, since the forms were due October 1.

Mr. Brainard asked staff to include the MET course evaluation results in MET board presentations from time to time, as he appreciated the evaluations and the qualitative comments that participants provided.

B. Receive report on retirement systems that provide in-house training (2:16:30)

Ms. Kranes reported on the systems that were accredited by the PRB to provide MET Core and Continuing Education (CE) training to trustees. Ms. Kranes explained that the Teacher Retirement System and the Employees Retirement System discontinued their Core accreditation because they were now utilizing the PRB's free online courses to provide Core training to their new board members.

7. Review and discuss report from the Executive Director on the following matters – Anumeha Kumar (2:18:12)

A. 2019 TEXPERS Summer Educational Forum (2:18:18)

Ms. Kumar provided an overview of the presentation on legislative changes regarding funding policy guidance and rulemaking that she and Chair Leibe made at the 2019 TEXPERS Summer Educational Forum.

B. 2019 TLFRA Conference (2:19:05)

Ms. Kumar provided an overview of the presentation that Mr. Brainard and staff made during the 2019 TLFRA Conference.

C. Updated Fiscal Year 2020 Operating Budget (2:21:13)

Ms. Kumar stated that the PRB is operating well within its current operating budget.

D. 2019 Attorney General's Government Law & Liability Conference (2:21:42)

Ms. Kumar provided details about the Attorney General's Government Law & Liability Conference on December 12 – 13.

Mr. Brainard motioned to approve attendance of interested Board members at the Conference.

The motion was made by Ms. Shivers and seconded by Ms. Dush.

The motion passed unanimously.

E. Staff update (2:22:42)

Ms. Kumar stated that the PRB had begun the hiring process for the Actuarial Analyst, Investment Analyst, and Office Manager positions and hoped to fill those vacancies soon.

8. Call for future PRB agenda items – Chair Leibe (2:23:31)

There was no discussion of this item.

9. Data and location of next PRB meeting – TBD (2:23:40)

Mr. Brainard stated that the next Board meeting would be held Friday, November 15, 2019.

10. Invitation for public comment (2:23:55)

Mr. Tyler Grossman, El Paso Fire & Police, commented on the fee disclosure requirement by asset class. Mr. Grossman noted that the recommendation to include alternative fees individually in a separate table may be difficult to accomplish and suggested that alternative fees be listed in aggregate.

Mr. David Stacy, Midland Fire, remarked on Ms. Dush's previous comments regarding how TLFRA systems got into the position that they are currently in, stating that the 2008 recession was particularly difficult for TLFRA systems to recover from. He offered to discuss the matter further after the meeting.

11. Adjournment (2:28:29)

Mr. Brainard adjourned the meeting at 10:39 AM.

In Attendance:

PRB Staff Present

Anumeha Kumar
Westley Allen
Bryan Burnham
Kenny Herbold

Michelle Kranes
Ashley Rendon
Mariah Miller
Benjamin Warden

Guests Present

Josh Yager – Anodos
Shanna Wadsworth – CPS Energy
Robert Nathan – CPS Energy
Steve Waas – HMEPS
Ariana Whaley – ERS
James Marts – Odessa Fire
Eddie Solis – TEXPERS
Alva Littlejohn – Lubbock Fire
Paul Brown – TEXPERS
Michael Trainer – San Antonio Fire & Police
Joe Gimenez – TEXPERS

Jill Jones – Odessa Fire
Erin Brown – Odessa Fire
Kenneth Oliver – TMRS
Warren Schott – San Antonio Fire & Police
Wayne Oberhoff – TESRS
Tom Harrison – TCDRS
Robert Hulme – Fort Worth Employees
Retirement System
Tyler Grossman – El Paso Fire & Police
Ralph Marsh – Houston Fire

Art Alfaro – TEXPERS
Pattie Featherston – Austin Police
Premal Amin – Austin Fire
Clint Smith – HPOPS, HMEPS, and Dallas Police
& Fire

David Keller – Self
Andrew Poreda – Sage Advisory
James Perry – Maples Group
Pat Franey – HPOPS

Chair Stephanie Leibe

TAB 2

Notice of Proposed Rulemaking

Part 17. State Pension Review Board

Chapter 609. Public Retirement System Investment Expense Reporting

40 TAC §609.101, §609.103, §609.105, §609.107, §609.109 & §609.111

The State Pension Review Board (the Board or PRB) proposes new 40 TAC Chapter 609, concerning Public Retirement System Investment Expense Reporting.

BACKGROUND AND PURPOSE

The proposed rules would enhance the investment fee disclosure requirements for the purpose of financial reporting by Texas public retirement systems. Texas Government Code §802.103(a)(3), as added by Senate Bill 322 (86R) requires Texas public retirement systems to list by asset class, all direct and indirect commissions and fees paid by the retirement system during the system's previous fiscal year for the sale, purchase or management of system assets.

To standardize reporting, the proposed rules would provide a comprehensive definition of investment expense to include direct and indirect investment management fees and commissions, broken down by five asset classes, and to include other investment-related expenses, which would include expenses for investment consultant(s), custodial, investment-related legal, and investment research.

Over the past decade, institutional investors, including public retirement systems, have increased their allocation to alternative investments. Those investors have raised concerns that expenses for alternative investments are opaque and generated momentum for greater fee transparency in this asset class. A 2015 report by CEM Benchmarking showed that a substantial portion of private equity expenses comprised carried interest and other performance incentives and bonuses.

Many of the large public retirement systems, outside of and within Texas, already require their managers to disclose performance fees. The 2017 Sunset legislation for the Employees Retirement System of Texas required the system to report profit-share expenses for alternative investments, including investments in private equity, hedge funds, and private real estate. Therefore, to increase transparency and disclosure for the alternative/other asset class, the proposed rules would require a retirement system to report any financial remuneration related to profit-share arrangements.

Greater investment fee transparency and standardized reporting would allow the PRB, policymakers, public retirement systems, system members, and the public to effectively compare the investment expenses associated with the operation and management of a public retirement system's investment activities. Therefore, the PRB is proposing these rules to implement Texas Government Code §802.103(a)(3), as added by Senate Bill 322 (86R).

SECTION-BY-SECTION SUMMARY

Proposed new §609.101 establishes the authority for the chapter.

Proposed new §609.103 establishes the purpose of the chapter.

Proposed new §609.105 establishes the definitions specific to the chapter.

Proposed new §609.107 establishes the applicability of investment expense reporting and outlines the exceptions as determined by the Board.

Proposed new §609.109 outlines the information to be reported by Texas public retirement systems.

Proposed new §609.111 establishes a structure by which Texas public retirement systems should report investment expenses. It also adopts the Asset Categorization Document, which provides guidance to Texas public retirement systems on reporting their direct and indirect management fees and commissions.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Westley Allen, Accountant, has determined that for each year of the first five-year period the proposed new rules would be in effect, there will be no foreseeable implications relating to cost or revenues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering these rules.

PUBLIC BENEFIT/COST NOTE

Mr. Allen has determined, under Government Code §2001.024(a)(5) that for each year of the first five-year period the proposed new rules are in effect, the public benefit anticipated as a result of enforcing the proposed rule would be that it creates greater investment fee transparency and that it standardizes reporting, which would allow the board, policymakers, public retirement systems, system members, and the public to effectively compare the investment expenses associated with the operation and management of a public retirement system's investment activities. Also, the proposed rules will help with a clearer and consistent implementation of §802.103(a)(3) of the Texas Government Code.

Potential impact on those public retirement systems that are required to comply with the rule is unlikely, and related costs, if any, would be minimal. Systems could use existing resources to absorb the minor costs associated with adding a note on direct and indirect fees to the annual reports they already provide to the Board. The fiscal note prepared by the Legislative Budget Board in response to SB 322, which requires the reporting that these rules address, concluded there would be no impact to local governments or to the systems required to comply. LBB's analysis reflects, partly, the comments provided by various pension systems during the legislative session. (LBB Fiscal Note, 86th Legislative Regular Session, SB 322, Committee Report 2nd House, Substituted, <https://capitol.texas.gov/tlodocs/86R/fiscalnotes/pdf/SB00322H.pdf#navpanes=0>).

Agency staff, likewise, shared drafts of the proposed rule content with stakeholders for their input. After considering any comments received, the agency staff developed the proposed rules. Several stakeholders commented that the original draft provisions may have been construed by some systems to require that systems submit audited investment-fee information, resulting in possible costs to a system. After considering the stakeholders' comments, staff proposes a rule that does not require systems to submit audited investment-fee information, and the board hereby clarifies that intent in this rule proposal. The rules allow a public retirement system to report the investment-fee information in an unaudited schedule within the system's annual financial report.

GOVERNMENT GROWTH IMPACT STATEMENT

The Board has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of PRB employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to PRB;
- (5) the proposed rule may create a new regulation to the extent that it implements a statutorily imposed reporting requirement (SB 322);
- (6) the proposed rule will not expand, limit, or repeal existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not positively or adversely affect the state's economy.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.

Mr. Allen has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments because the rules do not involve those entities and, instead, concern administrative reporting requirements applicable only to public pension systems. Therefore, no regulatory flexibility analysis, as specified in Texas Government Code § 2006.002 is required.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

Mr. Allen has further determined there is no effect on local economy for the first five years that the proposed amendments are in effect because the rules do not involve factors of local economy. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§ 2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT)

This rule proposal is not subject to Texas Government Code § 2001.0045, concerning increasing costs to regulated persons, because, as described above in the public benefit and cost note, the proposed amendments do not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code § 2007.043.

ENVIRONMENTAL RULE ANALYSIS

The proposed rule is not a “major environmental rule” as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Anumeha Kumar, Executive Director, State Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498 or by electronic mail to prb@prb.texas.gov. Commenters are encouraged to include “rule comments” in the subject line of the electronic mail. Comments will be accepted until 5:00 p.m. on January 10, 2020, which is 35 days after publication in the *Texas Register*.

LEGAL CERTIFICATION

Ms. Kumar certifies that legal counsel has reviewed the proposed rules and found them to be within the state agency's legal authority to adopt.

STATUTORY AUTHORITY

The proposed rules are authorized by the Texas Government Code, §802.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §802.103(e), which allows the Board to adopt rules to implement requirements related to a public retirement system's annual financial report.

CROSS REFERENCE TO STATUTES AND CODES AFFECTED

The proposed new rules affect and implement Texas Government Code, Chapter 802, including §802.103.

<rule>

§ 609.101. Authority.

These rules are promulgated under the authority of Texas Government Code, §801.201, relating to rulemaking, and §802.103, relating to an annual financial report and the Board's authority to adopt rules necessary to implement that section.

§ 609.103. Purpose.

(a) The governing body of a public retirement system, as mandated by §802.103 of the Texas Government Code, is required to publish an annual financial report showing the financial condition of the system as of the last day of the fiscal year covered in the report.

(b) Texas Government Code §802.103(a)(3) requires within the annual financial report, a listing, by asset class, of all direct and indirect commissions and fees paid by the retirement system during the system's previous fiscal year for the sale, purchase or management of system assets.

(c) This chapter implements these reporting requirements to help ensure consistency in investment expense reporting by public retirement systems, which will benefit those systems, the Board, policymakers, and the public, through the ability to make enhanced comparisons and allow for the better analysis, policymaking, and understanding of investment expenses paid by public retirement systems.

(d) This chapter is not intended to contradict generally accepted auditing standards, governmental accounting standards, or widely recommended best practices for financial reporting by governmental entities. It is also not intended to prevent systems from making additional disclosures beyond those listed in this chapter.

§ 609.105. Definitions.

The following words and terms, for the purposes of this chapter, shall have the following meanings, unless the rule indicates otherwise.

(1) "Annual financial report" means as defined by §802.103 of the Texas Government Code.

(2) "Asset class" means a group of securities that share similar characteristics, perform comparably in the marketplace, and are generally governed by the same laws and regulations.

(3) "Board" means the State Pension Review Board.

(4) "Direct and indirect fees and commissions" means amounts paid to investment managers for managing assets; commissions paid to brokers for trading securities on a per share basis; and profit share as defined by §815.3015(a)(2) of the Texas Government Code.

(5) "Fees netted from returns" means an amount that an investment manager collects or retains from earned investment returns rather than from the pension trust fund.

(6) "Governing body of a public retirement system" means as provided by Texas Government Code §802.001(2).

(7) "Investment expense" means direct and indirect fees and commissions and amounts retained or paid for investment services.

(8) "Investment manager" means as defined by §802.204 of the Texas Government Code.

(9) "Investment service" means a service provided to a public retirement system for general purposes of administering its investment program such as custodial, investment consulting, investment-related legal services, and research.

(10) "Public retirement system" means as defined by §801.001(2) and §802.001(3) of the Texas Government Code, but shall not include defined contribution plans as defined by Texas Government Code, §802.001(1-a) or retirement systems consisting exclusively of volunteers organized under the Texas Local Fire Fighters' Retirement Act as defined by Texas Government Code, §802.002(d).

§ 609.107. Applicability.

This chapter applies to every public retirement system.

§ 609.109. Investment Expense Reporting.

For the first reporting period:

(a) A public retirement system with 180 days or more remaining in its current fiscal year as of the effective date of this section shall include the required investment expense disclosures per this chapter in its annual financial report that covers that fiscal year.

(b) A public retirement system with fewer than 180 days remaining in its current fiscal year as of the effective date of this section shall include the required investment expense disclosures per this chapter during the first fiscal year that begins after the effective date of this chapter, as part of its regularly scheduled annual financial report.

(c) The provisions of this section shall expire on April 1, 2022.

§ 609.111. Investment Expense Reporting Structure.

(a) Public retirement systems shall:

(1) report direct and indirect fees and commissions:

(A) in the fiscal year they are incurred;

(B) by asset class;

(C) in a supplemental schedule in the notes to the financial statements; and

(2) identify amounts netted from returns separately from those paid from the trust.

(b) Investment services provided to the system shall be reported in a supplemental schedule contained in the notes to the financial statements that are part of a public retirement system's annual financial report.

(c) A retirement system shall report expenses incurred for investment services by type of service provided, even if multiple investment services are provided by a single firm. Those expenses should not be reported by asset class.

(d) The asset classes are:

(1) Cash;

(2) Public Equity;

(3) Fixed Income (including private debt);

(4) Real Assets;

(5) Alternative/Other.

(e) The Board hereby adopts by reference the 2020 Asset Class Categorization Guide (2020 ACC Guide) to assist in categorizing items by asset class.

(f) The Asset Class Categorization Guide is available to all public retirement systems. A public retirement system may obtain the most current version of the Asset Class Categorization Guide from the offices of the State Pension Review Board and from its website at <http://www.prb.texas.gov>.

(g) For an investment product containing investments in more than one asset class, a public retirement system shall report fees according to the corresponding asset class.

(h) For a fund of funds, reported fees must include the top-layer management fees charged by the fund-of-fund manager and the fees charged by all subsidiary fund managers, and all profit share, reported as a single amount.

(i) A public retirement system must list the types of investment included in the "Alternative/Other" asset class as described in the 2020 ACC Guide.

TAB 3

Pension Review Board
November 15, 2019

Please find below the Proposed Notice of Intention to Review, Notice of Proposed Amendments, and Notice of Proposed Repeal, to be published concurrently in the *Texas Register*:

Notice of Intention to Review

STATE PENSION REVIEW BOARD

Title 40, Part 17

The State Pension Review Board (PRB) files this notice of intent to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 40, Part 17, Chapter 601, concerning General Provisions, Chapter 603, concerning Officers and Meetings, Chapter 605, concerning Standardized Form, and Chapter 607, concerning Minimum Educational Training Program.

This rule review is being conducted pursuant to Texas Government Code, §2001.039, which requires state agencies to review and consider for repeal, re-adoption, or re-adoption with amendments their administrative rules every four years.

As part of the review process, elsewhere in this issue of the *Texas Register*, PRB contemporaneously proposes amendments to the rules contained in Chapters 601, 604, 605 and 607. The PRB also proposes the repeal of 607.111.

The review will include, at the minimum, consideration of whether the reasons for adopting the rules continue to exist. The PRB will accept comments regarding the review. The comment period will last for 31 days following the publication of this notice in the Texas Register.

All comments and/or questions regarding this rule review may be submitted to Anumeha Kumar, Executive Director, State Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498 by electronic mail to prb@prb.texas.gov. Commenters are encouraged to include "rule comments" in the subject line of the electronic mail.

Notice of Proposed Amendments

PART 17. STATE PENSION REVIEW BOARD

CHAPTERS 601, 604, 605 & 607

40 TAC §§601.1, 604.1, 605.3, 607.111, 607.140

The State Pension Review Board (PRB) proposes amendments to §601.1 (relating to Purpose), §604.1 (relating to Historically Underutilized Businesses), §605.3 (relating to Submission of Forms), §607.140 (relating to PRS Reporting). The PRB also proposes the repeal of §607.111 (relating to Minimum Educational Training Requirements for Current Trustees and System Administrators).

BACKGROUND AND PURPOSE

The rule changes are proposed as a result of the PRB's rule review, which was conducted pursuant to Texas Government Code §2001.039.

The proposed amendment to §601.1 (relating to Purpose) changes the agency's reference in the purpose of the rules to update its authorizing statute from the original Vernon's Texas Codes Annotated, to its current governing statute, which is in the Texas Government Code.

The proposed amendment to §604.1 (relating to Historically Underutilized Businesses) changes the reference to the Comptroller of Public Accounts' updated rules relating to Historically Underutilized Business.

The proposed amendment to §605.3 (relating to Submission of Forms) makes technical changes to the language of the rule.

The proposed amendment to §607.140 (relating to PRS Reporting) changes the period and frequency for reporting training received by administrators and trustees of public retirement systems. Currently, public retirement systems report training twice a year through the submission of a standard form. The Minimum Educational Training (MET) Program has been established for several years, and at this time, most public retirement system administrators and trustees are in a two-year continuing education cycle for which they must report four hours of training over the two-year cycle. Because of these reasons, and to assist Texas public retirement systems by minimizing required reporting, the agency proposes annual rather than semiannual reporting of training.

The PRB also proposes to update this section to include information currently collected on the standard MET forms concerning trustee and administrator contact and term information. At the time that the rules were originally adopted, the MET Program was still in development. The update to the rule would reflect the categories in the standard forms that the public retirement systems are currently reporting to the PRB.

The proposed repeal of §607.111 (relating to Minimum Educational Training Requirements for Current Trustees and System Administrators) would remove §607.111(a) – (c), as those sections expired December 31, 2016. Furthermore, this rule originally applied to public retirement system trustees and administrators who were already serving as of January 1, 2015. Since those trustees and administrators have completed their initial continuing education cycle, §607.111(d) is no longer necessary.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Westley Allen, Accountant, has determined that for each year of the first five-year period the rule changes as proposed would be in effect, there will be no foreseeable implications relating to cost or revenues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering these rules.

PUBLIC BENEFIT/COST NOTE

Mr. Allen has determined, under Government Code §2001.024(a)(5) that for each year of the first five-year period the rule changes as proposed are in effect, the public benefit anticipated as a result of enforcing the rule changes as proposed would be updated and clarified rules. Also, the amendment relating to PRS Reporting would enhance efficiency in training reporting by public retirement system administrators.

GOVERNMENT GROWTH IMPACT STATEMENT

The Board has determined that during the first five years that the rule changes as proposed will be in effect:

- (1) the rule changes as proposed will not create or eliminate a government program;
- (2) implementation of the rule changes as proposed will not affect the number of PRB employee positions;
- (3) implementation of the rule changes as proposed will result in no assumed change in future legislative appropriations;
- (4) the rule changes as proposed rule will not affect fees paid to PRB;
- (5) the rule changes as proposed will not create a new regulation;
- (6) the rule changes as proposed will not expand existing regulations. The changes to §607.140 would limit the existing rule, as it would change the required reporting by public retirement systems to the PRB from twice a year to once annually. The rule changes as proposed would repeal §607.111 (relating to Minimum Educational Training Requirements for Current Trustees and System Administrators) to remove expired rules;
- (7) the rule changes as proposed will not change the number of individuals subject to the rule; and
- (8) the rule changes as proposed will not positively or adversely affect the state's economy.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.

Mr. Allen has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these rule changes as proposed because the rules do not involve those entities and, instead, concern administrative reporting requirements applicable only to public pension systems. Therefore, no regulatory flexibility analysis, as specified in Texas Government Code § 2006.002 is required.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

Mr. Allen has further determined there is no effect on local economy for the first five years that the rule changes as proposed are in effect because the rules do not involve factors of local economy. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§ 2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT)

This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because, as described above in the public benefit and cost note, the proposed amendments do not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code § 2007.043.

ENVIRONMENTAL RULE ANALYSIS

The rule changes as proposed are not "major environmental rules" as defined by Government Code §2001.0225. The rule changes as proposed are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

PUBLIC COMMENT

Written comments on the rule changes as proposed may be submitted to Anumeha Kumar, Executive Director, State Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498 or by electronic mail to prb@prb.texas.gov. Commenters are encouraged to include "rule comments" in the subject line of the electronic mail. Comments will be accepted until 5:00 p.m. on January 6, 2020, which is 31 days after publication in the *Texas Register*.

LEGAL CERTIFICATION

Ms. Kumar certifies that legal counsel has reviewed the rule changes as proposed and found them to be within the state agency's legal authority to adopt.

STATUTORY AUTHORITY

The rule changes as proposed are authorized by the Texas Government Code, §802.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE TO STATUTES AND CODES AFFECTED

The rule changes as proposed affect Texas Government Code, Chapters 801 and 802, specifically §801.201(c), §801.211(b), §801.202(1) and (2).

<rule>

§601.1. Purpose. The rules and regulations of the State Pension Review Board are set forth for the purpose of interpreting and implementing Texas ~~[Vernon's Texas Codes Annotated,]~~ Government Code, Title 8, Subtitle A, Chapters 801 and 802 ~~[Chapter 801,]~~ and to establish general policies.

§604.1. Historically Underutilized Businesses. In accordance with Texas Government Code §2161.003, the Board adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter D ~~[B,]~~ Division 1, regarding historically underutilized businesses. A copy of the Comptroller of Public Accounts rules may be obtained by writing to: Executive Director, State Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or by accessing the w[~~W~~]eb site of the Secretary of State, at www.sos.state.tx.us/tac/.

§605.3. Submission of Forms. (a) A public retirement system must complete and submit to the Board the standard forms identified as Form numbers PRB-100, PRB-200, PRB-300, PRB-400, and PRB-1000 in §605.1 of this chapter relating to Adoption of Standard Forms.

(b) ~~A~~ ~~[The]~~ public retirement system must submit the forms with the information the system submits to the Board as a result of reviews and studies conducted by the Board regarding the actuarial soundness and current financial condition of the fund the system administers.

§607.140. PRS Reporting. (a) By September ~~[March 1 and October]~~ 1 of each year, a PRS shall accurately report to the Board on behalf of its trustees and system administrator the MET credit hours completed, as required by subchapter B. A PRS shall submit the report[s] on a form provided by the Board.

(b) In the September ~~[March]~~ 1 report, a PRS shall submit the MET credit hours completed between August 1 ~~[September 1]~~ of the previous year and July 31 ~~[January 31]~~ of the current year and any previously unreported training hours. ~~[In the October 1 report, a PRS shall submit the training hours completed between February 1 and August 31 of the current year and any previously unreported training hours.]~~ A PRS shall be responsible for providing the following information to the Board on an ongoing basis. A PRS shall notify the Board of any changes in such information within 30 days after the date of the changes. A PRS shall submit this information on a form provided by the Board.

(1) For each trustee: the name, ~~[occupation,]~~ mailing address, phone number, e-mail, position (such as Chair, Vice-Chair, Secretary, etc.), trustee type (such as Active, Retired, Citizen, etc.), term start date, [date of assuming or re-assuming the trustee's position on the governing body,] term length, and the term end date ~~[expected last date of service].~~

(2) For a system administrator: the name, title, phone number, fax number, e-mail, and date of hire. ~~[business contact information, hiring date, and the last date of employment.]~~

Notice of Proposed Repeal

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 607. MINIMUM EDUCATIONAL TRAINING PROGRAM

40 TAC §607.111

STATUTORY AUTHORITY

The repeal is proposed under the authority of Texas Government Code §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business, and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

STATUTES AND CODES AFFECTED

No other statutes, articles or codes are affected by this proposal.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

<rule>

§607.111. Minimum Educational Training Requirements for Current Trustees and System Administrators.