



# Model Ethics and Conflict-of-Interest Policy for Texas Public Retirement Systems

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*PENSION REVIEW BOARD*

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## **BACKGROUND**

Pursuant to Section 801.210 of the Texas Government Code, the State Pension Review Board (PRB) has developed the following Model Ethics and Conflict-of-Interest Policy for voluntary use by public retirement systems in Texas. Texas public retirement systems are not required to utilize the model policy when developing and/or adopting their own policies.

Adoption of ethics and conflict-of-interest policies may help public retirement systems to outline standards of conduct expected of their board of trustees, as plan fiduciaries, to act responsibly, honestly and in the best interest of the fund, and to avoid creating even the appearance of impropriety. The PRB developed the model ethics and conflict-of-interest policy to function as a general policy that can be used as a guide for minimum levels of ethical and conflict-of-interest requirements for public retirement systems.

The provisions below are intended to aid retirement systems in identifying ethical standards, conflicts-of-interest, and properly avoiding, disclosing and managing conflicts. This model is a guide, not a complete statement of all ethical standards, conflict of interest requirements, or legal requirements that may apply to a retirement system. It also is not offered and should not be interpreted as legal advice.

The model policy has been created for the trustees of retirement systems; however, systems may adopt a similar policy for their key employees as well. Additionally, systems may include relevant attachments to their policy, such as applicable statutory section language and required conflict-of-interest disclosure forms and statements.

### **Statutory Requirements for Texas Public Retirement Systems**

Public retirement systems should be aware, as they develop ethics and conflict-of-interest policies that certain requirements exist in law that may apply to system trustees. Many of the ethical standards and conflict-of-interest and disclosure requirements that may apply to public retirement systems can be found in various Texas statutes as outlined below:

- a. Article 16, Section 67 of the Texas Constitution contains provisions regarding fiduciary duties applicable to state and local retirement systems' board of trustees.
- b. Chapter 802, Section 802.203 of the Texas Government Code outlines the fiduciary responsibilities of the governing body of a public retirement system and states that the governing body shall discharge its duties solely in the interest of the participants and beneficiaries.
- c. Chapter 572 of the Texas Government Code contains provisions relating to standards of conduct, and conflict-of-interest and disclosure requirements for state officers and employees.
- d. Chapters 171 and 176 of the Texas Local Government Code contain provisions relating to conflict-of-interest and disclosure requirements applicable to officers of municipalities, counties, and certain other local governments.

- e. Governing statutes of public retirement systems could also contain fiduciary, ethics, conflict-of-interest and/or disclosure requirements. Texas statewide and local retirement systems' governing statutes can be found in the Texas Government Code, Vernon's Texas Civil Statutes, or Local Ordinances adopted by a city. A retirement system should refer to its governing statute to ensure all ethics-related requirements are included in their policy.
- f. The Texas Trust Code contained under the Texas Property Code also governs pension trusts in Texas. Chapter 113 of the Code states that a trustee shall administer the trust in good faith and shall perform all of the duties imposed on trustees by the common law. The Uniform Prudent Investor Act, Chapter 117 of the Texas Trust Code provides information on the duties of trustees including the standard of care, loyalty, impartiality, and the prudent investor rule in managing trust assets.
- g. Retirement systems may also be subject to federal laws, such as the Internal Revenue Service's fiduciary-related requirements and the Securities and Exchange Commission's Pay to Play Regulations.

### **Document Layout**

This model policy is divided into the following sections: Overview, Code of Ethics, General Standards of Conduct, Fiduciary Duties, Conflicts-of-Interest, Prohibited Transactions and Interests, Disclosure, Confidential Information, Nepotism, Gifts, Enforcement, Training, and Definitions. Where applicable, requirements set out in the Texas statutes are included in each section. Sections also may contain examples of additional non-statutory guidelines for systems that may wish to adopt policies beyond the statutory minimum standards.

Some of the non-statutory guidelines contained in this model policy have been designed after provisions contained in ethics policies of Teacher Retirement System of Texas (TRS), Employee's Retirement System of Texas (ERS), Texas County and District Retirement System (TCDRS), and Houston Municipal Employees Pension System (HMEPS).

The following material contains the Model Ethics and Conflict-of-Interest Policy that retirement systems may use to create their own policy.

## **[RETIREMENT SYSTEM] BOARD OF TRUSTEES ETHICS POLICY**

### **I. Overview**

The [retirement system] promulgates the following ethics and conflict-of-interest policy that sets forth the basic principles, guidelines and standards of conduct for trustees of the [retirement system].

This policy does not supersede any applicable federal and Texas law or administrative rule. [Retirement system] trustees must abide by all applicable federal and Texas laws, and [retirement system] policies, including this ethics and conflict-of-interest policy.

The purpose of this document is to outline the specific standards of conduct expected of [retirement system] trustees. This policy is a guide, not a complete statement of all legal and fiduciary responsibilities of the trustees; therefore, compliance with this policy does not necessarily ensure compliance with all legal requirements.

### **II. Code of Ethics**

Trustees of the [retirement system] shall abide by the Texas Constitution, Texas statutes, and federal laws applicable to the [retirement system] and will also abide by the code set forth below:

- A. Act solely in the best interest of the fund and the [retirement system] members, retirees, and beneficiaries.
- B. Act with integrity, competence, dignity, and in an ethical manner when dealing with participants, beneficiaries, the public, employees, vendors, and fellow members.
- C. Use reasonable care and prudence.
- D. Exercise independent professional judgment.
- E. Remain independent from conflicts-of-interest.
- F. Deal fairly, objectively, and impartially in all matters relating to the [retirement system].
- G. Maintain confidentiality of the [retirement system], participant, and beneficiary information.
- H. Not have a direct or indirect interest, including financial or other interests, or engage in a personal business activity that could conflict with the proper discharge of the trustee's duties or management of the [retirement system] investments.

### III. General Standards of Conduct

- A. A trustee must abide by the following statutory standards of conduct and shall not: <sup>1</sup>
1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the trustee in the discharge of official duties or that the trustee knows or should know is being offered with the intent to influence the trustee's official conduct;
  2. Accept other employment or engage in a business or professional activity that the trustee might reasonably expect would require or induce the trustee to disclose confidential information acquired by reason of his or her position with the [retirement system];
  3. Accept other employment or compensation that could reasonably be expected to impair the trustee's independence of judgment in the performance of his or her official duties for the [retirement system]; or
  4. Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the trustee's authority or performed the trustee's duties at the [retirement system] in favor of another.
- B. A trustee must abide by the following additional standards of conduct.<sup>2</sup>
1. Trustees must be honest in the exercise of their duties and must not take actions which will discredit the [retirement system].
  2. Trustees should avoid personal, employment, or business relationships that create conflicts of interest. Should trustees become aware of any conflict of interest, they have an affirmative duty to disclose and to cure the conflict in a manner provided for in this policy.
  3. Trustees may not use their relationship with [retirement system] to seek or obtain personal gain. This should not be interpreted to forbid properly authorized expense reimbursements from the [retirement system] to a Trustee for valid expenses incurred in the performance of duties or the use of the [retirement system] as a reference or the communication to others of the fact that a relationship with the public retirement system exists, provided that no misrepresentation is involved.
  4. Solicit, accept, or agree to accept any benefit from a person the trustee knows is interested in or is likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of the trustee's discretion.

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<sup>1</sup> Chapter 572, Section 572.051(a), Texas Government Code

<sup>2</sup> Additional non-statutory guidelines for systems that wish to adopt standards beyond the statutory minimum.  
Source: TCDRS Code of Ethics and HMEPS Ethics Policy.

#### IV. Fiduciary Duties

A. A trustee must abide by the following statutory fiduciary responsibility.

1. In the administration of the [retirement system] and in making and supervising investments of assets of the system, a trustee shall discharge his or her duties solely in the interest of the participants and beneficiaries:
  - a. For the exclusive purposes of:
    - i. providing benefits to participants and their beneficiaries; and
    - ii. defraying reasonable expenses of administering the system;
  - b. with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;
  - c. by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
  - d. in accordance with the documents and instruments governing the system.<sup>3</sup>
2. In choosing and contracting for professional investment management services and in continuing the use of an investment manager, a trustee must act prudently and in the interest of the participants and beneficiaries of the [retirement system].<sup>4</sup>
3. The board of trustees when appointing an investment manager for the system shall obtain an acknowledgement in writing stating that the manager has fiduciary responsibility to the fund.<sup>5</sup>
4. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries and, if the trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.<sup>6</sup>
5. In making investments, a trustee shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of

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<sup>3</sup> Chapter 802, Section 802.203(a), Texas Government Code

<sup>4</sup> Chapter 802, Section 802.203(b), Texas Government Code

<sup>5</sup> Chapter 802, Section 802.203(d), Texas Government Code

<sup>6</sup> Chapter 117, Sections 117.007 and 117.008, Texas Trust Code

their funds, considering the probable income therefrom as well as the probable safety of their capital.<sup>7</sup>

6. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.<sup>8</sup>

B. A trustee must abide by the following additional fiduciary duties.<sup>9</sup>

1. In making or participating in decisions, trustees shall give appropriate consideration to those facts and circumstances reasonably available to the trustee, which are relevant to the particular decision, and shall refrain from using facts or circumstances which are not relevant to the decision.<sup>10</sup>
2. Trustees shall ensure that [retirement system] business transactions are based on professional integrity and competence, financial merit and benefit to [retirement system] and on a competitive basis.
3. Review on a regular basis the efficiency and effectiveness of the [retirement system's] success in meeting its goals, including assessing the performance and actions of system service providers, such as investment managers, consultants, and actuaries.
4. Trustees shall use reasonable care to prevent other trustees from committing a breach and shall not participate in concealing such a breach, or knowingly or negligently permit such a breach to occur.<sup>11</sup>

## V. Conflicts-of-Interest

A. Statutory conflict-of-interest provisions governing state officials.

1. A trustee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the trustee's duties.<sup>12</sup>
2. Make personal investments that could reasonably be expected to create a substantial conflict between the trustee's private interest and the interest of [retirement system].<sup>13</sup>

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<sup>7</sup> Article 16, Section 67(a)(3), Texas Constitution

<sup>8</sup> Chapter 117, Section 117.004(a), Texas Trust Code

<sup>9</sup> Additional non-statutory guidelines for systems that wish to adopt standards beyond the statutory minimum.

<sup>10</sup> HMEPS Ethics Policy

<sup>11</sup> HMEPS Ethics Policy

<sup>12</sup> Chapter 572, Section 572.001(a), Texas Government Code

<sup>13</sup> Chapter 572, Section 572.051(a)(4), Texas Government Code



3. A trustee may not solicit or accept from the [retirement system], or any third party a commission, fee, bonus, retainer, or rebate that is compensation for the trustee's personal solicitation for the award of a contract for investment services or sale of goods to the [retirement system].<sup>14</sup>
- B. Statutory conflict-of-interest provisions governing local officials.<sup>15</sup>
1. If a trustee has a substantial interest in a business entity or in real property, the trustee shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:
    - a. In the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
    - b. In the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.
  2. The board of trustees of the [retirement system] shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a trustee has a substantial interest. The affected trustee may not participate in that separate vote. The trustee may vote on a final budget if the trustee has complied with Texas Local Government Code, Chapter 171; and the matter in which the trustee is concerned has been resolved.<sup>16</sup>
- C. Trustees must abide by the following additional conflict-of-interest guidelines.<sup>17</sup>
1. Trustees should make reasonable efforts to avoid conflicts of interest and appearances of conflicts of interest.<sup>18</sup>
  2. Trustees may not under any circumstances accept offers, by reason of their service, relationship or employment with the [retirement system], to trade in any security or other investment on terms more favorable than those available to the general investing public or, in the case of private market investments, a similarly situated investor.<sup>19</sup>
  3. A conflict of interest exists for a trustee whenever the trustee has a personal or private commercial or business relationship that could reasonably be

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<sup>14</sup> Chapter 572, Section 572.056, Texas Government Code

<sup>15</sup> Chapter 171, Section 171.004(a), Texas Local Government Code

<sup>16</sup> Chapter 171, Section 171.005, Texas Local Government Code

<sup>17</sup> Additional non-statutory guidelines for systems that wish to adopt standards beyond the statutory minimum.

<sup>18</sup> TRS Board of Trustees Ethics Policy

<sup>19</sup> ERS Code of Ethics and Personal Investment Activities

expected to diminish the trustee's independence of judgment in the performance of the trustee's responsibilities to the [retirement system].<sup>20</sup>

#### 4. Curing Conflicts-of-Interest<sup>21</sup>

- a. All trustees who become aware of a personal conflict of interest have an obligation not only to disclose that conflict, but to cure it. A person normally cures a conflict of interest by promptly eliminating it.
- b. A trustee can cure a conflict by prudently withdrawing from action on a particular matter in which a conflict exists provided that:
  - i. the person may be and is effectively separated from influencing the action taken;
  - ii. the action may properly be taken by others; and
  - iii. the nature of the conflict is not such that the person must regularly and consistently withdraw from decisions that are normally his or her responsibility with respect to the [retirement system].
- c. Trustees must disclose any conflicts-of-interest regarding matters which are before the board, absent themselves from any relevant deliberations, and not vote on the matter. Such trustees may be required to disclose additional relevant information with respect to the matter in question.

## VI. Prohibited Transactions and Interests

### A. Trustees must abide by the following prohibited-transaction guidelines.<sup>22</sup>

1. Certain transactions by trustees are prohibited, including:<sup>23</sup>
  - i. The purchase, sale, exchange or leasing of property with the [retirement system] if that trustee holds an interest in the property;
  - ii. The purchase, sale, or exchange of any direct investment with the system if that trustee holds an interest in the investment; and
  - iii. The lending of money or furnishing of other credit by the [retirement system] if the trustee has a direct or indirect interest in the loan or credit unless such loan or credit is generally available to members of the system, generates a reasonable return, provides adequate

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<sup>20</sup> TCDRS Ethics Policy

<sup>21</sup> TCDRS Ethics Policy

<sup>22</sup> Additional non-statutory guidelines for systems that wish to adopt standards beyond the statutory minimum.

<sup>23</sup> TCDRS Ethics Policy and HMEPS Ethics Policy

security, and is made in accordance with specific provisions of the plan.

2. Trustees shall not under any circumstance accept offers by reason of their position with the [retirement system] to trade in any security or other investment on terms more favorable than those available to the general investing public.
  3. Trustees shall not use their position with the [retirement system] to solicit business for their own account or the account of an immediate relative or business associate.
  4. Trustees shall not borrow from investment managers, outside service providers, professional advisors or consultants, banks or other financial institutions with which the [retirement system] has a business relationship , unless such entities are normally engaged in such lending in the usual course of their business.
  5. No trustee shall serve as a placement agent in connection with any [retirement system] investment. A former trustee may be prohibited from serving as a placement agent in connection with any system investment for a certain period of time. A placement agent is any person or entity hired, engaged, or retained by or acting on behalf of an external investment manager or investment fund or on behalf of another placement agent as a finder, solicitor, consultant, broker or other intermediary to raise investments from or to obtain access to the system, directly or indirectly.
  6. Trustees shall not cause the system to engage in any prohibited transactions outlined above with any immediate relative or business associate of the trustee, any other trustee, employee, custodian, vendor or consultant to the system, or any person providing services to the system.
- B. Trustees may buy or sell a publicly traded security of an issuer which is held by the [retirement system], but may not engage in a personal securities transaction when the trustees have actual knowledge that the [retirement system] is trading such securities.<sup>24</sup>
- C. Statutory requirements for former state officials:
1. Trustees may not for two years after ceasing to be in their respective positions at the [retirement system] make any communication to or appearance before, an officer or employee of [retirement system], with the intent to influence [retirement system] action to benefit the person seeking such action. This restriction does not apply to the act of providing information as long as such communication is done without the intent to influence any actions by the [retirement system].<sup>25</sup>

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<sup>24</sup> Additional non-statutory guidelines for systems that wish to adopt standards beyond the statutory minimum.

<sup>25</sup> Chapter 572, Section 572.054(a), Texas Government Code

2. A former trustee may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former trustee participated during the period of his/her service or employment, either through personal involvement or because the matter was within the trustee's official responsibility.<sup>26</sup>

## VII. Disclosure

### A. Statutory disclosure requirement governing state officials.

A trustee who has a personal or private interest in a measure, proposal, or matter pending before the [retirement system] shall publicly disclose the fact to the system. The trustee may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.<sup>27</sup>

### B. Statutory disclosure requirements governing local officials.

1. Trustees shall file a conflicts disclosure statement with respect to a vendor who enters into a contract with the [retirement system] or the system is considering entering into a contract with the vendor; and
  - a. the vendor has an employment or other business relationship with the trustee or a family member of the trustee that results in the trustee or family member receiving certain taxable income exceeding \$2,500.
  - b. the vendor has given one or more gifts with an aggregate value of greater than \$100 to the trustee or a family member; or
  - c. the vendor has a family relationship with the trustee<sup>28</sup>
2. A trustee is not required to file a conflicts disclosure statement in relation to a gift accepted by the trustee or a family member of the trustee if the gift is a political contribution as defined by Title 15, Election Code; or food, accepted as a guest.<sup>29</sup>
3. A trustee is not required to file a conflicts disclosure statement under Subsection (B1) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.01, Government Code.<sup>30</sup>

## VIII. Confidential Information<sup>31</sup>

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<sup>26</sup> Chapter 572, Section 572.054(b), Texas Government Code

<sup>27</sup> Chapter 572, Section 572.058, Texas Government Code

<sup>28</sup> Chapter 176, Section 176.003(a), Texas Local Government Code

<sup>29</sup> Chapter 176, Section 176.003(a-1), Texas Local Government Code

<sup>30</sup> Chapter 176, Section 176.003 (a-2), Texas Local Government Code

<sup>31</sup> Additional non-statutory guidelines for systems that wish to adopt standards beyond the statutory minimum.

- A. Trustees must not disclose confidential information, except when duly authorized personnel determine such disclosure is required by law.
- B. Trustees may be provided or have access to confidential information, including material, nonpublic information. It is the duty of trustees to maintain the confidentiality of information and not misuse confidential information, including material, nonpublic information, belonging to or relating to the [retirement system]. Trustees who come into possession of material, nonpublic information must not communicate it intentionally or inadvertently to any third party, including but not limited to relatives and friends, unless the person has the need to know for legitimate reasons and such communication is consistent with their responsibilities to the system.<sup>32</sup>

## **IX. Nepotism**

Statutory Nepotism provisions:

A trustee must not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:<sup>33</sup>

1. The individual is related to the trustee within the third degree by consanguinity or within the second degree by affinity; or
2. The trustee holds the appointment or confirmation authority as a member of the [retirement system] board and the individual is related to another member of that board within the third degree by consanguinity or within the second degree by affinity.
3. The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

## **X. Gifts<sup>34</sup>**

- A. Barring any statutory exception, a trustee is prohibited from soliciting or accepting a gift from any donor because of or through use of the trustee's position with the [retirement system]. Such gifts cannot be accepted by trustees themselves or for their families or business partners.

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<sup>32</sup> AFSCME *Best Practices for Trustees and Pension Systems, Ethical and Fiduciary Conduct*. The Best Practices section included in this publication has additional provisions relating to prohibition on insider trading that the retirement systems could consider including in their policy.

<sup>33</sup> Chapter 573, Section 573.041, Texas Government Code. Computation of degree of consanguinity and determination of affinity provisions can be found under Sections 573.023 and 573.024, respectively.

<sup>34</sup> TCDRS Ethics Policy. Chapter 36, Section 36.10 of the Texas Penal Code and Chapter 176 of the Texas Local Government Code contain specific provisions relating to acceptance of gifts, benefits and entertainment and applicable statutory exceptions for state and local officials, respectively.

- B. Under no circumstances may trustees accept a gift if the source of the gift is not identified or if the trustee knows or has reason to know that the gift is being offered through an intermediary.
- C. If a prohibited gift is received by a trustee, he or she should return the gift to its source. If that is not possible or feasible, the gift should be donated to charity.
- D. Statutory exceptions regarding acceptance of gifts are allowed under this policy as long as the trustee is not influenced by the gift.

## **XI. Enforcement<sup>35</sup>**

- A. The Board will enforce this policy. A complaint or allegation of a Trustee's potential violation of the policy must be in writing and submitted to the Executive Director. The Executive Director will promptly notify the chair of the alleged violation. If the potential violation involves the chair, the executive director will notify the vice-chair, or secretary or other Board Trustee, as applicable. The Executive Director may have Legal Counsel review the claim and related information. No retaliatory action will be taken against the reporting person for any such report involving another person made in good faith.
- B. The chair, or vice-chair, or secretary or other Board Trustee, as applicable, shall present the recommendations to the Board for resolution of the matter. The Board has final decision-making authority with respect to Trustee violations of the policy, and such decision shall be binding on the Trustee. A Trustee who is a subject of the alleged violation may not deliberate or vote on such Board action
- C. If the Board finds a violation occurred, the Board may issue a resolution of reprimand, censure, or other appropriate measure, including a request for resignation.
- D. A violation of this policy may be reported to applicable regulatory or law enforcement agencies when appropriate or required.

## **XII. Training**

- A. Every trustee shall attend periodic ethics training and acknowledge in writing that he or she understands the ethical standards, has abided by them, and will continue to abide by them. New trustees are to make this written acknowledgment when they take office.<sup>36</sup>

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<sup>35</sup> Additional non-statutory guidelines for systems that wish to adopt standards beyond the statutory minimum. Please note that specific enforcement procedures in an ethics policy can play an important role in consistent application of the policy. A retirement system can tailor its enforcement procedures to best address its specific needs.

<sup>36</sup> Additional non-statutory guidelines for systems that wish to adopt standards beyond the statutory minimum. Source: TRS Ethics Policy.

### **XIII. Definitions**

In this policy the following definitions apply:

- A. "Board" means the board of trustees of the [retirement system].
- B. "Trustee" means a member of the Board of Trustees of the [retirement system].
- C. "Fiduciary" means any person who exercises any discretionary control over the management of the public retirement system or any authority or control over the management or disposition of its assets.
- D. "Executive Director" means the Director or Administrator of the [retirement system].
- E. "Legal Counsel" means the lawyer or firm of lawyers designated from time to time as the Legal Counsel of the [retirement system].
- F. "Gift" means anything of tangible value given without consideration and includes any payment of cash, receipt of goods or services, or other benefit.