

Public Agenda Item - #9

9. Discussion and Consideration of Process to Fill Vacancy of Elected Position on Board of Trustees for Unexpired Term

August 25, 2009

BACKGROUND:

At the May 19, 2009, Employees Retirement System of Texas (ERS) Board of Trustees (board) meeting, it was announced that elected board member Don Green retired from the employee class of ERS. Texas Government Code Section 815.003 provides that in order to be eligible to serve as an elected member of the board, a person must be a member of the retirement system and must hold a position that is included in the employee class of membership.

A person's membership in the employee class of the retirement system terminates upon retirement. Because a retiree is no longer holding a position included in the employee class, an elected trustee who retires no longer meets the eligibility requirement as an elected trustee and vacates the office. However, in accordance with Texas Constitution Article 16, Section 17 and applicable Attorney General opinions, the trustee continues to perform the duties of his office in a holdover capacity until a successor is duly qualified.

Texas Government Code Section 815.003(f) requires the ERS Board of Trustees to fill vacancies of elected positions on the board for the unexpired terms. Trustee Green was elected to a six year term that began on September 1, 2007 and concludes on August 31, 2013. Therefore, the board must determine the process to use to fill the unexpired term of trustee Green.

RECOMMENDED SELECTION PROCESS:

ERS staff is recommending that the board utilize a process that provides an opportunity for any qualified contributing member of the employee class, who meets the eligibility requirements described in Exhibit A, to apply for the board vacancy. To this end, staff recommends contacting the executive heads of state agencies, state agency benefit coordinators, and the organizations of which ERS is aware that represent active and retired Texas state employees to solicit applications for the board vacancy. The information would also be posted on the ERS web site.

ERS staff will develop an appropriate application for interested state employees to complete that will enable the board to determine which applicants are most qualified to be appointed to fill trustee Green's unexpired term. Staff also believes that it is in the retirement system's and board's best interest for the board to make the appointment in time for the new board member to take the required oaths of office, participate in the board member orientation and then be able to attend the board's November workshop being held on November 19 and 20. In order to meet this time frame, within a week following this board meeting, staff will notify the parties described in the preceding paragraph about the board's request for applications to fill the board

vacancy and provide them with information as to how interested state employees may apply for the position. All applications must be received by ERS by 5:00 p.m., Friday, September 25, 2009. Thereafter, staff will review the applications to determine which applicants meet the statutory eligibility requirements, and the eligible applications will be forwarded to all board members to review. One or more special board meetings may be needed to enable the board to discuss and consider the appointment.

STAFF RECOMMENDATION:

The ERS staff recommended motion is attached to this agenda item.

ATTACHMENT - 1

Exhibit A – Statutory Eligibility Requirements for Vacancy of Elected Position on ERS Board of Trustees

PROPOSED ACTION - #9

Discussion and Consideration of Process to Fill Vacancy of Elected Position on Board of Trustees for Unexpired Term

August 25, 2009

PROPOSED MOTION:

I move that the Board of Trustees of the Employees Retirement System of Texas adopt the selection process, described in the Public Agenda Item, that provides an opportunity for any qualified contributing member of the employee class, who meets the eligibility requirements described in the attached Exhibit A, to apply for the board vacancy to fill the unexpired term of trustee Don Green. I further move that staff be delegated the authority to prepare and distribute an appropriate application for interested state employees to complete that will enable the board to determine which applicants are most qualified to be appointed to fill trustee Green's unexpired term. Staff is also requested to conduct reference and background checks and other due diligence deemed advisable and to determine whether or not each applicant meets the statutory eligibility requirements to be appointed to the vacancy of the elected position on the board.