

Decision Meeting Material

November 10, 2016

Railroad Commission of Texas

Employees Retirement System of Texas, Board of Trustees of

RAILROAD COMMISSION OF TEXAS

Issue 1

Continue the Railroad Commission of Texas for 12 Years With a Name That Reflects the Agency's Important Functions. (Page 11)

Change in Statute

Rec. 1.1 (Page 17) Change the name of the Railroad Commission of Texas to the Texas Energy Resources Commission and continue the agency for 12 years.

Chairman Gonzales Proposed Modification

Modify Recommendation 1.1 to only include the 12-year continuation of the Railroad Commission. Remove the name change from the recommendation.

Representative Flynn Proposed Modification

Adopt Recommendation 1.1 to continue the Railroad Commission of Texas for 12 years, but do not change the agency's name. Give the Railroad Commission the authority to change the name if it so desires.

Issue 2

Contested Hearings and Gas Utility Oversight Are Not Core Commission Functions and Should Be Transferred to Other Agencies to Promote Efficiency, Effectiveness, Transparency, and Fairness. (Page 19)

Change in Statute

Rec. 2.1 (Page 28) Require use of the State Office of Administrative Hearings for contested gas utility cases.

Rec. 2.2 (Page 28) Require the Railroad Commission to use the State Office of Administrative Hearings for all other contested case hearings.

Rec. 2.3 (Page 29) Transfer gas utility regulation from the Railroad Commission to the Public Utility Commission.

Representative Raymond Proposed Modification

Under this modification to Recommendations 2.1, 2.2, and 2.3, the Commission would contract with SOAH to conduct the Commission's hearings for contested permit and enforcement

cases and Gas Utility Oversight would be transferred to PUC, with potential to contest the rates at SOAH. In conducting hearings, the PUC and SOAH would consider the Commission's applicable substantive rules and policies.

Issue 3

Oil and Gas Monitoring and Enforcement Need Improvements to Effectively Ensure Public Safety and Environmental Protection. (Page 33)

Change in Statute

- Rec. 3.1 (Page 39)** Require the Railroad Commission to develop a strategic plan for the Oil and Gas Division that tracks and measures the effectiveness of monitoring and enforcement.
- Rec. 3.2 (Page 40)** Require the Railroad Commission to develop in rule a process for issuing expedited penalties for minor violations.

Management Action

- Rec. 3.3 (Page 40)** Direct the Railroad Commission to accurately track and report the number of oil and gas violations annually.
- Rec. 3.4 (Page 40)** Direct the Railroad Commission to systematically track major violations.
- Rec. 3.5 (Page 40)** Direct the Railroad Commission to develop a definition of repeat violations in rule and report the number of repeat violations on its website.
- Rec. 3.6 (Page 41)** Direct the Railroad Commission to audit a sample of oil and natural gas production reports and transportation reports.
- Rec. 3.7 (Page 41)** Direct the Railroad Commission to develop a policy to require production reports to be filed electronically.

Representative Flynn Proposed Modification

Adopt Recommendation 3.7 and also direct the agency to provide oil and gas production information on its website in a format that is easier for royalty owners to use and understand.

- Rec. 3.8 (Page 41)** Direct the Railroad Commission to expand its risk matrix for oil and gas inspections.

Issue 4

Insufficient and Inequitable Statutory Bonding Requirements Contribute to the Large Backlog of Abandoned Wells. (Page 43)

Change in Statute

Rec. 4.1 (Page 47) Amend blanket bond requirements in statute to better reflect risk and increase equitability.

Issue 5

Improved Oversight of Texas' Pipeline Infrastructure Would Help Further Ensure Public Safety. (Page 51)

Change in Statute

Rec. 5.1 (Page 53) Authorize the Railroad Commission to enforce damage prevention requirements for interstate pipelines.

Rec. 5.2 (Page 53) Authorize the Railroad Commission to create a pipeline permit fee.

Change in Appropriations

Rec. 5.3 (Page 54) Modify language in the General Appropriations Act to further ensure that the Railroad Commission collects, and is appropriated back, fee amounts to offset the costs of administering its Pipeline Safety program, including administration costs.

Issue 6

The Railroad Commission's Contracting Procedures Are Improving, but Continued Attention Is Needed. (Page 55)

Management Action

Rec. 6.1 (Page 57) Direct the Railroad Commission to centralize all contract administration functions by September 1, 2016.

Rec. 6.2 (Page 57) Direct the Railroad Commission to implement and keep updated contracting best practices as outlined by recent legislation and the comptroller.

Rec. 6.3 *(Page 57)* Direct the Railroad Commission's executive director to report quarterly to the commissioners at their open meetings regarding the status of contracting improvements.

Issue 7

The Railroad Commission's Statute Does Not Reflect Standard Elements of Sunset Reviews. (Page 59)

Change in Statute

Rec. 7.1 *(Page 61)* Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the Railroad Commission.

Rec. 7.2 *(Page 61)* Allow the Oil and Gas Regulation and Cleanup Fund Advisory Committee to expire.

Rec. 7.3 *(Page 62)* Continue requiring the Railroad Commission to submit its report on the Oil and Gas Regulation and Cleanup Fund to the Legislature.

Proposed New Issues

Vice Chair Taylor Proposed New Issue 1

Direct the Railroad Commission to study, develop, and implement ways to clean up and revive old oil fields for secondary and tertiary recovery using either the unitization method or other legal means which the Commission may develop or recommend. As part of this recommendation, the Railroad Commission shall consult with the Bureau of Economic Geology. (Management action — nonstatutory)

Colonel West Proposed New Issue 2

Direct the Railroad Commission to incorporate findings from the TexNet Seismic Monitoring Program at UT's Bureau of Economic Geology as they become available into its oil and gas disposal well rules or guidance, as applicable. The rules should seek to prevent any induced seismicity caused by disposal wells. (Management action — nonstatutory)

Representative Raymond Proposed New Issue 3

Amend RRC's statute to require the agency to publish comprehensive oil and gas enforcement data (complaints, inspections, violations, enforcement actions taken, and penalties levied/collected) online, in a publicly accessible, searchable, trackable format. Make data available by operator and on a well-by-well basis and by bulk download.

Representative Raymond Proposed New Issue 4

Management recommendation to direct RRC to: review all relevant rules on spill reporting and response, and make changes to increase environmental protection and cleanup during flooding, such as specifying timeframes for responding to spills; clarify its rules, so that both oil and gas spills and other spills like brine, produced water, or fracking fluid are also reported, tracked, and cleaned up; and report these spills and the results of any cleanup effort in an accessible way, either directly on its website or by sharing the information with TCEQ as part of its joint work on spills. (Management action — nonstatutory)

Representative Raymond Proposed New Issue 5

Amend Chapter 26 of the Texas Water Code to require operators that treat "domestic wastewater" or "mobile drinking water treatment system wastewater" at oil and gas well drill sites to obtain a permit from TCEQ instead of RRC.

Representative Raymond Proposed New Issue 6

Improve inspection, regulation, and reporting of injection wells by: either removing the specific permit fee amount in Chapter 27, allowing the Commission to set a more

reasonable amount, or raising it to \$1,000 (Change in statute); requiring RRC to require monthly reporting of liquid injection in all disposal wells and make the information publicly accessible (Change in statute); and directing RRC to conduct a comprehensive review of its rules and programs regarding oil and gas disposal wells, and consider changes related to casing and cementing, aquifer exemptions, notice and public participation, seismic activity, and wastewater reporting and tracking. (Management action — nonstatutory)

Sunset Modification/New Issue Proposal

Sunset Commission Member: Gonzales

Staff Contact: Chris Sanchez

Name of Agency: Railroad Commission

Indicate one of the following: Modification to Issue # 1

Title of modification or new issue:

Continue the Railroad Commission of Texas for 12 years.

Describe how modification or new issue is supposed to work:

Modify Recommendation 1.1 to only include the 12 year continuation of the Railroad Commission.
Remove the name change from the recommendation.

Talking points for the modification or new issue you wish to provide:

Sunset Modification/New Issue Proposal

Sunset Commission Member: Chairman Dan Flynn

Staff Contact: David Erinakes

Name of Agency: Railroad Commission

Indicate one of the following: Modification to Issue 1

Title of modification or new issue:

Do not change agency's name

Describe how modification or new issue is supposed to work:

Adopt recommendation 1.1 to continue the Railroad Commission of Texas for 12 years, but do not change the agency's name. Give the Railroad Commission the authority to change the name if it so desires.

Talking points for the modification or new issue you wish to provide:

1. No need to change the name. No desire among industry, citizens or taxpayers to assume this cost.
2. Change requires cost and we have other priorities within the state.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Richard Peña Raymond

Staff Contact: David Leo

Name of Agency: Railroad Commission of Texas

Indicate one of the following: Modification to Issue 2.1, 2.2, 2.3

Title of modification or new issue:

Promoting efficiency, effectiveness, transparency, and fairness: Require the agency to send contested rates over to PUC and SOAH but keep enforcement and regulatory issues at the agency.

Describe how modification or new issue is supposed to work:

The following recommendation would help improve the agency's overall efforts of promoting efficiency, effectiveness, transparency, and fairness.

- Under this recommendation, the Commission would contract with SOAH to conduct the Commission's hearings for contested permit and enforcement cases and Gas Utility Oversight would be transferred to PUC, with potential to contest the rates at SOAH. In conducting hearings, the PUC and SOAH would consider the Commission's applicable substantive rules and policies.

Talking points for the modification or new issue you wish to provide:

Most of the industry opposition to moving cases over to SOAH involves the perception that moving enforcement cases over to SOAH could impact the expertise at the agency on penalty, enforcement, regulatory and technical issues.

Most of the support for moving the cases from cities and consumer groups is concerned that too often natural gas and pipeline companies setting natural gas rates get their way at the RRC and is not sufficient consideration given to the impacts on the rates of cities, industries and consumers. SOAH already handles telecommunication and electricity rate setting cases, so having SOAH conduct contested case hearings on gas utility cases make sense. SOAH has staff already that are engaged in ratemaking issues.

As a compromise, keeping enforcement cases at the agency but sending over utility cases to PUC and eventually SOAH would take away many of the objections of key industrial stakeholders, while preserving the opportunity for large and small natural gas consumers to have a hearing at an independent agency where the decision-makers do not receive money from the industry.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Chairman Dan Flynn

Staff Contact: David Erinakes

Name of Agency: Railroad Commission

Indicate one of the following: Modification to Issue 3

Title of modification or new issue:

Provide oil and gas production information in a format more useful to royalty owners

Describe how modification or new issue is supposed to work:

Adopt management recommendation 3.7 that directs the Railroad Commission to develop a policy to require production reports to be filed electronically. In addition to the staff recommendation, direct the agency to provide oil and gas production information on its website in a format that is easier for royalty owners to use and understand.

Talking points for the modification or new issue you wish to provide:

- The IT system at the RRC is in fact old and outdated hurting efforts for data collection to support safety and knowledge initiatives.
- As we understand it, there is still 4 terabytes of information on old Fortran computers.
- Industry can fuel better data management
- Taxpayers/mineral owners deserve better and more timely data
- This is a management, not statutory recommendation

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Van Taylor

Staff Contact: Ryan Paylor

Name of Agency: Railroad Commission of Texas

Indicate one of the following: New Issue - Management Recommendation

Title of modification or new issue: Direct the Railroad Commission of Texas to study ways to better conserve and prevent waste in legacy oil fields with remaining reserves and severely declining production by enabling the efficient use of Enhanced Oil Recovery techniques, including unitization, on secondary and tertiary wells to prolong the life of an aging oil field.

Describe how modification or new issue is supposed to work: The new management recommendation would direct the Railroad Commission of Texas to study, develop, and implement ways to clean up and revive old oil fields for secondary and tertiary recovery using either the unitization method or other legal means which the Commission may develop or recommend. As part of this recommendation the Railroad Commission shall consult with the Bureau of Economic Geology.

Talking points for the modification or new issue you wish to provide: The intent of this management recommendation is to better facilitate the redevelopment of aging legacy oil fields experiencing severe production declines enabling the increased production of Texas oil.

This change would allow the Commission a better opportunity to end the current practice where a small minority of working interest owners or royalty interest owners are allowed to block full field re-development over the wishes of the supermajority of owners in the same aging field.

Secondary or tertiary oil production in the state can yield huge benefits to the state -- including increased private investment, job creation, state savings when private companies handle oil field clean-up, more state and local tax revenue, and enhanced compliance with federal CO2 clean air mandates.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Col. West

Staff Contact:

Name of Agency: Railroad Commission

Indicate one of the following: New Issue

Title of modification or new issue:

Incorporate TexNet findings into RRC disposal well rules to address induced seismicity.

Describe how modification or new issue is supposed to work:

Direct the Railroad Commission to incorporate findings from the TexNet Seismic Monitoring Program at UT's Bureau of Economic Geology as they become available into its oil and gas disposal well rules or guidance, as applicable. The rules should seek to prevent any induced seismicity caused by disposal wells.

Talking points for the modification or new issue you wish to provide:

- RRC hired a seismologist in March, 2014.
- RRC modified its disposal well rules in November, 2014:
 - New well applications must include information related to USGS seismic information within 100 square miles of the proposed well location;
 - RRC may modify, suspend, or terminate a disposal well permit (including volumes, pressures, and shutting in a well) if scientific data indicates that the well may be contributing to seismic activity;
 - RRC may request volumes and pressures more frequently than annually;
 - RRC may require additional information to demonstrate disposal well confinement.
- The UT Bureau of Economic Geology (BEG) was appropriated \$4.47 million for the TexNet Seismic Monitoring Program in the 84th Legislative Session.
 - Purchase and install > 22 permanent seismic stations
 - Purchase portable seismic stations for rapid response deployment in areas of recent or ongoing seismic activity.
- Governor Abbott appointed members to the TexNet Technical Advisory Committee in March, 2016.
- The State of Oklahoma has reduced disposal, directed ceased operations, and banned new applications for disposal wells in an "Area of Interest" of a recent 5.8 magnitude earthquake in an area of approximately 15,000 square miles (Arbuckle formation).

Sunset Modification/New Issue Proposal

Sunset Commission Member: Richard Peña Raymond

Staff Contact: David Leo

Name of Agency: Railroad Commission of Texas

Indicate one of the following: New Issue

Title of modification or new issue:

Accountability and public access to enforcement and complaint information

Describe how modification or new issue is supposed to work:

Amend RRC's statute to require the agency to publish comprehensive oil and gas enforcement data (complaints, inspections, violations, enforcement actions taken, and penalties levied/collected) online, in a publicly accessible, searchable, trackable format. Make data available by operator and on a well-by-well basis and by bulk download.

Talking points for the modification or new issue you wish to provide:

Requiring RRC to publish additional complaint and enforcement data was a recommendation of the Sunset Commission in 2011. The Railroad Commission is currently doing part of this, publishing quarterly and yearly enforcement data. However, the data is aggregated and does not actually list companies and is not very helpful to the public. At TCEQ, one can easily search online databases to see both inspections and enforcement information. Making both this data sharing permanent but also developing a more comprehensive, searchable database would be useful to the public and help companies realize their public image is at stake when they violate the law.

In addition, there is currently no way to easily track complaints made by the public or local government. At TCEQ, complaints are put on-line and one can easily determine whether the complaint led to any finding of safety or environmental problems, or any enforcement actions. At RRC, it is very difficult to determine what happens to individual complaints. There appears to be no process that includes the complainant so they are involved in the process.

Current Sunset Commission recommendations hints at this transparency and accessibility but a specific management action to develop this online database would take advantage of the real improvements made by RRC with their new technology, website and ICE (Inspection, Compliance and Enforcement) tools.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Richard Peña Raymond

Staff Contact: David Leo

Name of Agency: Railroad Commission of Texas

Indicate one of the following: New Issue

Title of modification or new issue:

Enforcement and transparency: Require the agency to clarify and improve its spill reporting and cleanup rules.

Describe how modification or new issue is supposed to work:

The following management recommendations would help improve the agency's overall efforts of better enforcement and transparency.

- The Railroad Commission should review all relevant rules on spill reporting and response, and require changes that will increase environmental protection and cleanup during flooding, such as specifying timeframes for responding to spills.
- The Railroad Commission should clarify its rules, and require that both oil and gas spills and other spills like brine, produced water, or fracking fluid also be reported, tracked, and cleaned up.
- The Railroad Commission should report these spills and the results of any cleanup effort in an accessible way, either directly on its website or by sharing the information with TCEQ as part of its joint work on spills.

Talking points for the modification or new issue you wish to provide:

As has been highlighted in numerous articles -- including a series in the El Paso Times -- in terms of its policy on oil and gas spills, the Railroad Commission is broken and needs fixing.

As an example, while there were a reported 2,700 oil and gas site spills last year, about half of them were not tracked. Why? Because Texas tracks only spills of petroleum product, not wastewater or other types of spilled chemicals.

The rules are also incredibly unclear on even whether or not oil and gas producers are required to report spills of wastewater -- or not. Some producers are reporting them, while some are not. Virtually all other states with major oil and gas production have clear rules requiring reporting and remediation.

What responsibility those companies have for cleaning up these spills of brine or fracking fluids is also unclear. Are companies responsible for cleaning up a wastewater spill that kills local vegetation or worse -- economic crops? Unclear.

The rules get even murkier when flooding or other natural disasters occur. If a river floods, and impacts an oil or gas site -- or a spill travels to a water source during a flood -- what are the rules in reporting, clean up, and enforcement? Unclear, or at least the Railroad Commission appears not to timely respond to such situations. Indeed, it appears that many operators are not even self-reporting their spills of oil and gas during floods, or taking responsibility for these spills. As Senator José Rodríguez stated in a recent letter to the Sunset Commission in response to the series of articles in the EL Paso Times as well as his own information request of the agency, "to my knowledge, the RRC has yet to provide any examples of enforcement actions taken against the oil and gas producers whose spills into Texas waterways were documented by the newspaper."

Sunset Modification/New Issue Proposal

Sunset Commission Member: Richard Peña Raymond

Staff Contact: David Leo

Name of Agency: Railroad Commission of Texas

Indicate one of the following: New Issue

Title of modification or new issue:

Require the Texas Commission on Environmental Quality, instead of the Railroad Commission, to issue permits for onsite treatment of domestic wastewater generated at oil and gas well drill sites.

Describe how modification or new issue is supposed to work:

Amend Chapter 26 of the Texas Water Code to require operators that treat “domestic wastewater” or “mobile drinking water treatment system wastewater” at oil and gas well drill sites to obtain a permit from TCEQ instead of RRC. The Railroad Commission currently issues these permits based on an MOU between TCEQ and RRC that states while TCEQ establishes water quality standards, RRC is responsible for enforcing any violations of those standards resulting from RRC-regulated activities such as oil and well gas drilling.

Talking points for the modification or new issue you wish to provide:

- These permit holders must conduct water testing – either through an independent third-party lab for “treated domestic wastewater” or by the operator or a subcontractor for “treated wastewater from mobile drinking water treatment systems.” However, it’s unclear that this testing is always being conducted, and TCEQ, not RRC, has the water quality expertise to ensure the water is truly being treated appropriately before reuse.
- The Railroad Commission staff are already stretched thin from monitoring more than 433,000 oil and natural gas wells and just don’t have the time to ensure operators are following permit guidelines.
- Treating wastewater onsite is a relatively new approach that likely was not contemplated by the current MOU between TCEQ and RRC, last updated in 2012.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Richard Peña Raymond

Staff Contact: David Leo

Name of Agency: Railroad Commission of Texas

Indicate one of the following: New Issue

Title of modification or new issue:

Proper Inspection, Regulation and Reporting of Injection Wells and Their Waste: Require the agency to conduct a comprehensive review and improve its rules and programs regarding the disposal of oil and gas.

Describe how modification or new issue is supposed to work:

The following management recommendations would help improve the agency's efforts of proper inspection, regulation and reporting of injection wells and their waste.

Management Recommendation:

- The Railroad Commission should conduct a comprehensive review of its rules and programs regarding oil and gas disposal wells, and consider changes related to casing and cementing, aquifer exemptions, notice and public participation, seismic activity and wastewater reporting and tracking.

Statutory Recommendation:

- The Legislature should either remove the specific permit fee amount in Chapter 27, allowing the Commission to set a more reasonable amount, or raise it to \$1,000.
- The Legislature should require the RRC to require monthly reporting of liquid injection in all disposal wells and make the information publicly accessible.

Talking points for the modification or new issue you wish to provide:

No state has more oil and gas injection disposal wells than Texas, and no agency permits more than the Railroad Commission of Texas (RRC), often with limited oversight, inspection and enforcement.

Unfortunately, Texas' Rule 9 requirements for oil and gas wells are woefully outdated. An attempt by staff to update the rules back in 2012 was opposed by industry and ignored by Commissioners, while a relatively minor change -- to allow the Commission to "consider" seismic issues and change permits as needed - didn't go far enough to protect against the real threat of earthquakes from wastewater disposal.

Meanwhile, statutorily, oil and gas waste disposal entities are only required to pay a \$100 dollar permit fee, though a surcharge raises the amount to \$250.

Problems abound with the oil and gas disposal program. First, nearby communities and groundwater districts have inadequate notice when an onsite or commercial well is proposed, and the rules on who can contest such a permit are unclear. Second, there is increasing evidence -- most recently in Timpson - that injection has caused earthquakes and real damage, and yet the rules are still inadequate to consider the potential for seismic activity. In the meantime, the requirement that the Railroad Commission of Texas require and apply for an Aquifer Exemption when disposal wells are located in an area containing an aquifer has been ignored since the 1982 Memorandum of Agreement with EPA (see accompanying report). Finally, while the Commission can require monthly reporting of liquid waste that is injected, they routinely only require yearly reports, and such information is sparse and not properly tracked.

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

Issue 1

ERS Needs to Make Additional Improvements to Ensure Its Contracts Adhere to Best Practices and Provide Best Value to the State. (Page 13)

Management Action

- Rec. 1.1** *(Page 17)* Direct ERS to provide its new division clear authority over all of the agency's procurement and contracting functions, including contract oversight and enforcement.
- Rec. 1.2** *(Page 17)* Direct ERS to further centralize and consolidate its procurement and contracting staff into the new division.
- Rec. 1.3** *(Page 18)* Direct ERS to implement contract term dates in agency contracts, except in limited circumstances.

Issue 2

ERS Does Not Strategically Manage the Group Benefits Program (GBP) to Ensure Its Effectiveness and Plan for the Future. (Page 19)

Change in Statute

- Rec. 2.1** *(Page 23)* Require ERS to develop and regularly update a comprehensive annual report on the GBP.

Management Action

- Rec. 2.2** *(Page 23)* ERS should establish an advisory committee to obtain regular stakeholder and expert input on benefits.
- Rec. 2.3** *(Page 24)* Direct ERS to develop a process and clear criteria for evaluating changes to the GBP.

Issue 3

ERS' Benefit Decision Processes Lack Balanced Treatment and Full Information for Members. (Page 25)

Change in Statute

- Rec. 3.1** *(Page 29)* Require ERS to develop and implement a process that allows members to participate directly in the insurance appeal process.

Rec. 3.2 (Page 29) Require ERS to establish a precedent or other type of manual for the insurance appeal process.

Management Action

Rec. 3.3 (Page 30) Direct ERS to more effectively educate members about choices and decisions that can lead to unexpected health insurance charges.

Rec. 3.4 (Page 30) Direct ERS to ensure balanced representation on the Grievance Review Committee of customer service and other staff.

Rec. 3.5 (Page 30) Direct ERS to develop policies and procedures to govern reviews of Chapter 615 survivor benefit applications.

Rec. 3.6 (Page 31) Direct ERS staff to comprehensively track and analyze benefit application decision and appeals data.

Issue 4

ERS Does Not Adequately Track or Report All Costs Associated With Alternative Investments. (Page 33)

Change in Statute

Rec. 4.1 (Page 36) Require ERS to track and report profit-sharing in its alternative investments.

Representative Flynn Proposed Modification

Adopt Recommendation 4.1, but modify it to also direct ERS to report the final actual amounts of profit shared for each alternative investment at the conclusion of the investment and direct ERS to make all profit-sharing information readily available on its website. (Management action — nonstatutory)

Issue 5

ERS' Statute Does Not Reflect Standard Elements of Sunset Reviews. (Page 39)

Change in Statute

Rec. 5.1 (Page 40) Apply standard across-the-board requirements to ERS.

Rec. 5.2 (Page 40) Change the due date for the *Cost Management and Fraud Report* and continue the agency's other reports.

Proposed New Issues

Vice Chair Taylor Proposed New Issue 1

Require that ERS disclose all public information, including confidential information, to members of the Legislature upon request for legislative purposes. ERS would be allowed to designate certain records as confidential and require that the requesting legislator sign a confidentiality agreement to obtain the requested records.

Vice Chair Taylor Proposed New Issue 2

Expand the composition of the ERS Board of Trustees to include two taxpayer representatives that are not members of the retirement system — one appointed by the lieutenant governor and one appointed by the comptroller.

Representative Flynn Proposed New Issue 3

Require the governor's appointee to the ERS Board of Trustees to be a member of ERS who has retired and is receiving benefits from the retirement system, and has expertise in health insurance, employee benefits, investments, or a related field.

Senator Schwertner Proposed New Issue 4

Change the statutory requirement for the ERS Board of Trustees to adopt its experience study, and resulting actuarial assumptions, from once every five years to once every four years.

Senator Schwertner Proposed New Issue 5

Require the ERS Board of Trustees to approve any individual investment over \$100 million.

Senator Schwertner Proposed New Issue 6

Direct ERS, as part of its 2017 internal audit review of investment governance, to consider best practices in investment decision-making process, including

- the composition of its internal investment committees,
- investment authority,
- veto authority, and
- board oversight and use of the Investment Advisory Committee.

ERS would provide a copy of the internal audit report to the appropriate substantive legislative oversight committees, as well as the governor, lieutenant governor, and speaker upon presentation to the Board of Trustees. (Management action — nonstatutory)

Representative Flynn Proposed New Issue 7

Direct ERS to encourage its health insurance third party administrators to contract with any provider that agrees to provide medical and healthcare services in accordance with the plan. (Management action — nonstatutory)

Sunset Modification/New Issue Proposal

Sunset Commission Member: Representative Flynn

Staff Contact: David Erinakes

Name of Agency: ERS

Indicate one of the following: Modification to Issue 4.1 (management action)

Title of modification or new issue: Detailed investment reporting

Describe how modification or new issue is supposed to work: In addition to reporting the amount of profit-sharing by asset class, direct ERS to report the final actual amounts of profit shared for each alternative investment at the conclusion of the investment. Direct ERS to make all profit-sharing information readily available on its website. This modification would be contingent on passage of statutory changes requiring ERS to track and report its profit-sharing in alternative investments.

Talking points for the modification or new issue you wish to provide: This modification would provide an additional level of transparency by not only requiring reporting of profit sharing by asset type, but reporting actual amounts of profit shared at the close of each alternative investment. This modification would also increase transparency by directing ERS to post the profit-sharing information on the agency's website, in addition to publishing the information in its CAFR, investment reports, and board presentations.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Van Taylor

Staff Contact: Jeremy B. Mazur

Name of Agency: Employees Retirement System of Texas

Indicate one of the following: New Issue

Title of modification or new issue: Require that ERS disclose all public information, including confidential information, to members of the Legislature upon request.

Describe how modification or new issue is supposed to work:

In 2009 the Legislature amended ERS' statutes to broadly exempt retirees' records from disclosure under the Texas Public Information Act (Chapter 552, Government Code). Before 2009, those records were only exempt from the public access provisions of the Public Information Act. This meant that while retirees' records were shielded from public access, they were not exempt from other disclosure requirements within the Act. Specifically, before the 2009 change, members of the Legislature could request information regarding retirees for legislative purposes through the Public Information Act. The 2009 changes in ERS' statutes eliminated the Legislature's right of access to these records for legislative purposes.

Earlier this year, Senator Taylor's office submitted a Public Information Act request to ERS asking if certain individuals convicted of public service-related felonies were receiving pensions from the retirement system. The request was made for a legislative purpose. ERS denied the request. The statutes that were amended in 2009 to broadly exempt certain ERS records from disclosure under the Public Information Act were used to justify the agency's refusal.

This new issue would require that all of ERS' records, including retirees' records and any other confidential information, be made available to members of the legislature upon request for legislative purposes. As part of this recommendation, ERS would be allowed to designate certain records as confidential and require that the requesting legislator sign a confidentiality agreement in order to obtain the requested records.

Talking points for the modification or new issue you wish to provide:

All public information held by state agencies, including confidential information, should be made available to members of the Legislature for legislative purposes. This disclosure is a prerequisite for appropriate exercise of the Legislature's deliberative and investigatory functions.

ERS' statutes block the Legislature from records that may inform the body's drafting and deliberation of policies regarding system benefits and taxpayer obligation. For example, members cannot verify if

retirement system beneficiaries convicted of public corruption are receiving ERS pension checks in prison. This information would inform legislative deliberations regarding ERS' benefits policies.

Other retirement systems, including the Teachers Retirement System (TRS) and the Texas County District Retirement System (TCDRS), have not broadly exempted their records from Public Information Act. This means that certain records, including confidential information, are available for legislative review for legislative purposes.

This recommendation shines a brighter light on ERS' benefits and administration, providing members of the legislature with an appropriate -- and necessary -- right of access to all of the agency's records.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Van Taylor

Staff Contact: Jeremy B. Mazur

Name of Agency: Employees Retirement System of Texas

Indicate one of the following: New Issue

Title of modification or new issue: Expand the composition of the ERS board to include two taxpayer representatives.

Describe how modification or new issue is supposed to work:

The ERS Board of Trustees consists of six members. Three trustees are employee representatives elected by the retirement system's members. The other three trustees are appointees of the Governor, Speaker of the House, and Chief Justice of the Supreme Court respectively. This new issue expands the size of the ERS Board of Trustees from six to eight members. The two new members are required to be taxpayer representatives. One taxpayer representative shall be appointed by the Lt. Governor. The other taxpayer representative shall be appointed by the Comptroller. A taxpayer representative may not be a member of the retirement system.

Talking points for the modification or new issue you wish to provide:

Expanding the ERS Board of Trustees to include a taxpayer representative provides taxpayers with a meaningful voice. Just as retirement system members contribute portions of their paychecks to their pension funds, taxpayers also make contributions in the form of payments appropriated by the Legislature. While pension system beneficiaries are assigned to the ERS Board of Trustees, taxpayer representatives are not. This change ensures explicit taxpayer representation on the ERS board.

ERS' board considers a host of policy options that have a direct bearing on taxpayer obligations. These include benefit design, cost of living adjustments, return assumptions, and recommended member and sponsor contributions. Adding taxpayer representation to the ERS board ensures that taxpayers' interests on these matters inform the policy discussion.

Legally, the State of Texas may be held liable if the Employees Retirement System fails to meet its pension obligations. This means that the Legislature may have to contribute more taxpayer dollars in to the pension funds in order to make ends meet.

Public pension shortfalls and liabilities may create credit ratings liabilities for plan sponsors, potentially increasing the strain on taxpayers. In some instances, pension liabilities have prompted credit downgrades by ratings agencies, increasing the cost of public borrowing. These increase costs are shouldered by taxpayers.

Since taxpayers are on the hook for the state's public pension funds, they deserve a meaningful voice on the ERS board.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Representative Flynn

Staff Contact: David Erinakes

Name of Agency: ERS

Indicate one of the following: New Issue (statutory)

Title of modification or new issue: Retiree on Board of Trustees

Describe how modification or new issue is supposed to work: Require the governor's appointee to the ERS Board of Trustees to be a member of ERS who has retired and is receiving benefits from the retirement system, and has expertise in health insurance, employee benefits, investments, or a related field.

Talking points for the modification or new issue you wish to provide: Despite the retirement system including over 100,000 retirees and their beneficiaries, retirees have no direct voice on the Board of Trustees. Retirees receive benefits from and have an ongoing interest in strengthening and improving the system just like active members, and should not be excluded from the policymaking process. Further, other state pension systems have retirees on their boards, including the Teachers Retirement System and Texas County and District Retirement System.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Schwertner

Staff Contact: Taylor Borer

Name of Agency: ERS

Indicate one of the following: New Issue

Title of modification or new issue: Experience study and actuarial assumption timing

Describe how modification or new issue is supposed to work: Change the statutory requirement for the ERS Board of Trustees to adopt its experience study, and resulting actuarial assumptions, from once every five years to once every four years.

Talking points for the modification or new issue you wish to provide: Statute currently requires ERS to perform an experience study at least once every five years to look at the mortality, service, and compensation experience of the retirement system's members and beneficiaries. Based on this study, the ERS Board of Trustees develops and adopts important actuarial assumptions, like the expected rate of return for the fund. However, the study is only done once every five years despite significant changes in market conditions that can occur during this time. Under this recommendation, after ERS completes its experience study and the board adopts assumptions in 2018, the next experience study and adoption of actuarial assumptions would occur in 2022 instead of 2023 and every fourth year after that.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Schwertner

Staff Contact: Taylor Borer

Name of Agency: ERS

Indicate one of the following: New Issue (statutory)

Title of modification or new issue: Investment approval

Describe how modification or new issue is supposed to work: Require the ERS Board of Trustees to approve any individual investment over \$100 million.

Talking points for the modification or new issue you wish to provide: This new issue would limit ERS staff's authority to approve investments by statutorily requiring the ERS Board of Trustees to approve any investment over \$100 million. Requiring large investments to go before the full board would provide an additional layer of oversight for significant investment decisions.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Senator Schwertner

Staff Contact: Taylor Borer

Name of Agency: ERS

Indicate one of the following: New Issue (management action)

Title of modification or new issue: Investment governance internal audit

Describe how modification or new issue is supposed to work: Direct ERS, as part of its 2017 internal audit review of investment governance, to consider best practices in investment decision-making process, including

- the composition of its internal investment committees,
- investment authority,
- veto authority, and
- board oversight and use of the Investment Advisory Committee.

ERS would provide a copy of the internal audit report to the appropriate substantive legislative oversight committees, as well as the governor, lieutenant governor, and speaker upon presentation to the Board of Trustees.

Talking points for the modification or new issue you wish to provide: ERS' fiscal year 2017 internal audit plan includes a review of the agency's investment governance. This recommendation would direct the internal auditor to consider best practices in investment decision-making processes as part of its review. The Legislature could consider the audit findings and recommendations and make any statutory changes needed.

Sunset Modification/New Issue Proposal

Sunset Commission Member: Representative Flynn

Staff Contact: David Erinakes

Name of Agency: ERS

Indicate one of the following: New Issue (management action)

Title of modification or new issue: Any willing provider

Describe how modification or new issue is supposed to work: Direct ERS to encourage its health insurance third party administrators to contract with any provider that agrees to provide medical and healthcare services in accordance with the plan.

Talking points for the modification or new issue you wish to provide: ERS' third party administrators negotiate with providers to join the health insurance plans' networks. However, these negotiations can result in providers in any given geographic area being left out of the network, resulting in state employees and their families potentially having to travel further for care or having to find new doctors if ERS changes administrators. This modification would encourage ERS to ensure any provider willing to accept a plan's rates for services and other requirements is able to join the network, which could improve the network and provide state employees and their families more options for care.