

BOARD OF TRUSTEES
Reconvened Regular Meeting
Tuesday, May 17, 2005, 12:00 p.m.
Retirement Fund Conference Room

MINUTES

DEFINED BENEFITS

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan reconvened at 12:29 p.m. Tuesday, May 17, 2005, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

Board of Trustees Present:

Joe T. San Agustin, Chairman
James J. Taylor, Secretary
Katherine T.E. Taitano, Treasurer
Anthony C. Blaz, Trustee
Gerard A. Cruz, Trustee
George A. Santos, Trustee

Board of Trustees Absent:

Wilfred P. Leon Guerrero, Vice-Chairman

Staff Present:

Wilfred G. Aflague, Director
Paula M. Blas, Deputy Director
Pete Tajalle, Controller
Jackie Blas, Recording Secretary

Chairman Joe T. San Agustin stated that the Board of Trustees Regular Meeting for the Defined Benefits Plan recessed on Friday, May 13, 2005 and reconvened today, May 17, 2005 to discuss the Fund's Trust Agreement and the Legal Services Agreement for the recapture of investment losses.

Chairman San Agustin also stated that he has a proposed amendment to Article 8140, 4 GCA, for the appointment of the Retirement Fund Director and its position description. Chairman San Agustin stated that compared to the current position description it is only on qualifications with a college degree or equivalent.

Chairman San Agustin stated that the alternative is to get samples of the qualifications used by other agencies on the appointment of their directors. Chairman San Agustin stated that he has submitted the proposed amendment to Speaker Mark Forbes to be introduced as a bill. Chairman San Agustin stated that the acting capacity is good for ninety (90) days. Chairman San Agustin stated that Speaker Forbes would conduct a public hearing on the proposed amendment.

II. OLD BUSINESS

A. Trust Agreement

Chairman San Agustin stated that at the previous Board meeting, the Board recommended that the Trust Agreement be submitted to the Fund's Legal Counsel for review. Deputy Director Paula Blas stated that the Legal Counsel conducted a cursory review of the Trust Agreement. Deputy Director Blas suggested setting up a group to work with the Legal Counsel. Chairman San Agustin stated that the approach would be to introduce the Trust Agreement as a law. Director Wilfred Aflague stated that the Trust Agreement should be part of a packet to be presented to the Legislature as a proposed legislation.

Secretary James Taylor stated that he would like to move forward with the Trust Agreement. Secretary Taylor stated that the Trust Agreement needs to be signed independent of the law. Secretary Taylor stated that the Fund should have a law that would authorize the Trust Agreement.

Chairman San Agustin asked if the Trust Agreement is being referred to the Legal Counsel so that the Legal Counsel could come up with a working Trust Agreement. Secretary Taylor reiterated that there should be a law that authorizes the existence of a Trust Agreement. Trustee Anthony Blaz stated that the Board should develop legislation that would allow approval of the Trust. Chairman San Agustin recommended having the Legal Counsel work on the Trust Agreement to get it in place.

Trustee Gerard Cruz asked what are the implications of the Trust Agreement with regard to the existing law. Secretary Taylor stated that the existing law would be incorporated into the Trust Agreement. Deputy Director Blas stated that the Trust Agreement cannot change the law. Deputy Director Blas stated that a Trust cannot be in conflict with the statute that exists at the time the Trust is signed. Secretary Taylor stated that he would be the primary point of contact for the Trust Agreement and that Deputy Director Blas should ask that the Fund's Legal Counsel contact him.

B. Legal Services Agreement

Director Aflague stated that Section V of the Legal Services Agreement appears not to be in accordance with what the Board expected. Chairman San Agustin asked what was proposed in the RFP. Chairman San Agustin suggested restating the agreement saying to go after the losses on a contingency basis. Trustee Blaz stated that the rule of ethics was discussed in the meeting. Secretary Taylor stated that the Board approved going forward with this based on what Senator BJ Cruz had said which was that the lawyers would do this on a contingency basis. Treasurer Taitano asked how does a contingency work. Chairman San Agustin stated that it is based on the results. Chairman San Agustin stated that the person initiating would bear the costs. Secretary Taylor stated that he recalls asking if this would be on a contingency basis. Trustee Blaz stated that it was based on the response to the RFP and that no responder has proposed doing the work on a contingency basis. Trustee Cruz stated that he recalls that there can be up-front pre litigation fees.

Secretary Taylor stated that he is concerned about the contract not being on a contingency basis. Trustee Blaz stated that it is not too late to discuss this because it is still in the negotiating process. Trustee Cruz stated that he understood that if this would go beyond a class action suit then attorney would take steps.

Secretary Taylor stated that there was no clarification on how the two separate firms will interact. Trustee Blaz stated that every recovery is on contingency basis. Secretary Taylor stated that the contract says the Fund will pay \$300,000.00. Chairman San Agustin stated that the Fund would pay the costs up front. Chairman San Agustin stated that if it were decided that there is a case the Fund would recover 33 1/3%. Chairman San Agustin stated that the Fund is taking the full risk of losing the \$300,000.00. Trustee Blaz stated that he could include a more detailed description of the deliverables on the contract. Deputy Director Blas asked what would the Board want. Trustee Cruz stated that the Board would like to know what the up-front cost would be. Chairman San Agustin proposed that the Fund would share 50% of the costs. Trustee Cruz stated that he would like to know the risk to the Board on this matter.

Secretary Taylor stated that he would like to offer a resolution to go back to the attorney asking them to bear 50% of the costs; that only one attorney could be in charge; and that the attorney come back with a detailed project plan of deliverables for the Board to consider.

Secretary James Taylor, seconded by Trustee George Santos, moved to: 1) go back to the attorney offering a fifty-fifty split of costs upfront; 2) clarify who is in charge and that only one of the attorneys could be in charge; and 3) that the attorney come back with a detailed project plan including deliverables and estimated expenses for each of those deliverables, for the Board of Trustees' review and consideration. Without objection, the motion passed.

III. NEW BUSINESS

None

IV. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

V. ANNOUNCEMENTS

Chairman San Agustin informed the Board of Trustees that the next Board meeting is scheduled for June 2, 2005 at 12:00 Noon.

VI. ADJOURNMENT

There being no further business before the Board for the Defined Benefits Plan, on motion of Trustee Anthony Blaz, seconded by Trustee Gerard Cruz, and without objection, the meeting was adjourned at 1:29 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of May 17, 2005 Reconvened Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on July 8, 2005.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas