

NEW MEXICO EDUCATIONAL RETIREMENT BOARD

ACTION SUMMARY

February 16, 2018

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MINUTES OF THE
NEW MEXICO EDUCATIONAL RETIREMENT BOARD
REGULAR MEETING
February 16, 2018

1. CALL TO ORDER: QUORUM PRESENT

A Regular Meeting of the New Mexico Educational Retirement Board was called to order on this date at 9:00 a.m. in the Educational Retirement Board Conference Room, 6201 Uptown Boulevard, N.E., Ste. 203, Albuquerque, New Mexico.

Members Present:

Ms. Mary Lou Cameron, Chairwoman
Mr. H. Russell Goff, Vice Chairman [arriving at 9:10 a.m.]
Mr. Larry Magid, Secretary
Mr. Sam Collins, Deputy State Treasurer [Designee of the Hon. Tim Eichenberg]
Mr. David Craig

Members Excused:

Dr. Donald W. Duszynski

Staff Present:

Ms. Jan Goodwin, Executive Director
Mr. Rick Scroggins, Deputy Director
Mr. Bob Jacksha, CIO
Mr. Roderick Ventura, General Counsel
Ms. Susanne Roubidoux, Deputy General Counsel
Ms. Norma Henderson, CFO
Ms. Monica Lujan, Member Services Director
Ms. Lealia Nelson, Outreach Coordinator
Ms. Liz Lorang, Executive Assistant
Mr. Lawrence Esquibel, Chief Information Officer

Others Present:

Mr. Jason Ostroski, CliftonLarsonAllen
Ms. Patricia J. Turner, Contract Attorney
Mr. Sam Austin, NEPC
Ms. Judith Beatty, Recorder
[See sign-in sheet.]

b. Approval of Agenda

Mr. Magid moved approval of the agenda, as published. Mr. Craig seconded the motion, which passed unanimously.

c. Approval of Minutes – December 8, 2017

Mr. Magid moved approval of the minutes of the December 8, 2017, meeting, as submitted. Mr. Craig seconded the motion, which passed unanimously.

d. Introduction of Guests

Chairwoman Cameron welcomed staff and guests.

2. CONSENT AGENDA:

a. Board Travel – Spring CII Conference in March 2018 in Washington, DC

Chairwoman Cameron requested approval to attend the spring CII Conference in March 2018 in Washington, DC.

Mr. Magid requested approval to attend the Pension Bridge Conference in April in San Francisco.

Mr. Craig moved for approval. Mr. Magid seconded, and the motion passed unanimously.

[Mr. Goff joined the meeting.]

3. SWEARING IN OF NEW BOARD MEMBER – PLACEHOLDER

None.

4. PRESENTATION OF JUNE 30, 2017 AUDIT REPORT: CLIFTON LARSON ALLEN

Jason Ostroski, audit principal with CliftonLarsonAllen, presented the results of the FY 2017 financial statement audit and an update on the GASB 68 scheduled audit.

- CLA issued an unmodified clean opinion on November 22, 2017 on the financial statements.
- There were no material weaknesses or significant deficiencies identified.

- For the first year in many years, GASB has given pensions a break and there were no new accounting standards to implement this year.
- There were no particularly sensitive financial statement disclosures necessary to highlight, and no audit adjustments were identified in the audit.
- CLA is required to communicate any significant management judgments and accounting estimates (valuation of alternative investments and actuarial information, assumptions and methods used) and found them to be reasonably stated in relation to the financial statements as a whole.

Mr. Ostroski stated that management was very cooperative and professional during the audit process. There were a few findings when he reported to the board last year. The fact that there were no material weaknesses or significant deficiencies or other matter comments this year “certainly is a testament to addressing those comments and improvements that Jan Goodwin and Rick Scroggins and the addition of Norma Henderson have had to the financial reporting process.”

Mr. Ostroski presented a high level summary of a trend analysis on the ERB pension plan, focusing on net pension liability.

Mr. Ostroski noted that the Total Pension Liability (TPL) as a percentage of the ERB’s net position decreased from 61.58 percent in 2016 to 52.95 percent in 2017.

Mr. Ostroski said the Total Pension Liability as a percentage of the ERB’s net position decreased from 61.58 percent in 2016 to 52.95 percent in 2017. The biggest change in that is an accounting nuance as part of GASB, where every year a calculation is done to determine the discount rate and whether there are enough assets to fund future benefits. If in doing the calculation there is a crossover (which this year was in 2053), where the assets aren’t sufficient to fund future benefits, at that point the 20-year municipal bond rate becomes the calculation (3.5 percent) instead of the long-term rate of return. One of the big drivers this year, and which really contributed to the increase in the TPL, was a change in the assumption for the long-term rate of return from 7.75 percent to 7.25 percent.

Ms. Goodwin commented that GASB has a unique way of doing this calculation, which is that only the contributions of current members, and not new members, are allowed in the calculation. She stressed that the ERB is not anticipating running out of money at any time and will always be able to pay its benefits, so this calculation should be taken “with a big grain of salt.” Mr. Ostroski agreed. He added that the actuarial funding ratios are different from the accounting funding ratios, and in 2017 the actuarial funded ratio is 63 percent. Applying just the long-term rate of return versus the crossover rate that GASB is doing results in a much higher funding ratio.

Mr. Ostroski said CLA has begun the test work on the GASB 68 schedules and plans to issue the final report on the schedules in March.

Mr. Craig asked Ms. Goodwin if the ERB has gotten any feedback from employers on the schedules. Ms. Goodwin responded the ERB did a lot of proactive work with the employers, and also worked closely with the Office of the State Auditor, and has received very little feedback. The letter that goes out to them this year will discuss and explain the change in the TPL and remind them that this has had no effect on their borrowing ability.

Mr. Magid moved acceptance of the June 30, 2017, Audit Report. Mr. Goff seconded the motion, which passed unanimously.

5. INVESTMENT REPORTS: BOB JACKSHA, CIO

a. December 2017 Quarterly Performance Report

NEPC consultant Sam Austin presented this report.

- Over the past five years, the Fund returned 8.5 percent per annum, outperforming the policy index by 53 basis points and ranking in the 55th percentile of the InvestorForce Public Funds > \$1 billion universe and outperforming the actuarial assumed rate of 7.25 percent.
- Over the past three years, the Fund returned 7.8 percent per annum, outperforming the policy index by 35 basis points and ranking in the 31st percentile of its peer group.
- For the year ending December 31, 2017, the Fund experienced a net investment gain of \$1.62 billion, which includes a net investment gain of \$415.7 million during the quarter. Assets increased from \$11.7 billion 12 months ago to \$12.9 billion on December 31, 2017, with \$426 million in net distributions during the year. The Fund returned 13.9 percent, underperforming the policy index by 14 basis points and ranking in the 80th percentile of its peers.

b. Investment Committee Report

Mr. Jacksha stated that the February Investment Committee meeting was canceled and the single item on the agenda was deferred to the March meeting.

c. Other Investment Reports

None.

6. ALTERNATIVE RETIREMENT PLAN: PRESENTER LARRY MAGID

a. ARP Committee Report

Mr. Magid reported on discussion and action at the December 7 meeting, with the following highlights:

-- Deputy General Counsel Susanne Roubidoux presented an overview of the ARP Plan, which covered the statutes, regulations and oversight of the ARP; duties of the committee; comparison of the ARP Plan and the ERB plan; and the role of the ARP consultant, Cammack Retirement Group.

-- Cammack consultant Farhad Mirzada reviewed the communication strategy for plan participants, which the ARP Committee felt was lacking. This would involve looking at the entire pool of ARP participants and identifying pockets of people who needed advice; for example, those in the 25-35 age range in the "accumulation stages" could use help in making appropriate investment choices. Cammack was working with ERB to obtain salary information and has worked with TIAA and Fidelity to develop an accurate picture. They plan to have a proposed plan of action ready for the ARP Committee to review in the spring of 2018.

-- Cammack recommended that TIAA Real Estate, a variable annuity whose principal strategy is to purchase direct ownership interests in income-producing prime real estate, be put on watch.

-- The committee discussed articles from *The New York Times* regarding TIAA and its business operations and practices. A group of their employees filed a whistleblower complaint. The allegations were that TIAA pushes customers into products that do not add value, may not be suitable for them, and which generate higher fees. The New York attorney general is investigating. Mr. Mirzada mentioned that TIAA did reach out to Cammack before the news articles were published, but felt that their response was more fluff than substance. Cammack did speak with TIAA's senior leadership team about its concerns and the need for more direct responses.

7. UPDATE ON UBIT ISSUE AND TAX REFORM: ROD VENTURA, GENERAL COUNSEL

Following up on a question raised at the last meeting (before the Tax Reform bill was passed) about the Unrelated Business Income Tax (UBIT), Mr. Ventura said there was a concern because for governmental pension plans, including the NMERB, the interpretation has always been that pension plans are exempt from the UBIT. The House version of the Tax Reform bill was going to open up UBIT for governmental pension plans; however, the good news is that they didn't accept the House version and took the Senate version instead.

NEPC consultant Sam Austin noted that there are various lobbyists who would like to bring this back, so efforts are continuing behind the scenes.

8. DISCUSSION ON PLACING "PUBLIC COMMENT" ROUTINELY ON AGENDA: MARY LOU CAMERON, CHAIR; ROD VENTURA, GENERAL COUNSEL

Mr. Ventura stated that Mr. Eichenberg suggested at the last meeting that public comment be put on the ERB's regular agenda. Given the fact that there are some nuances to putting

public comment on an agenda that everyone needs to be aware of, the decision was made by the Chair to place this on today's agenda for discussion purposes.

Mr. Ventura said the Open Meetings Act does not require an agenda to include public comment, although there are some boards and commissions that do include it routinely. For instance, the NMERB, the Board of Pharmacy and PERA do not, while the New Mexico Retiree Health Care Authority, State Investment Council and Board of Nursing do. Under the Open Meetings Act, a meeting only has to be open and the public doesn't necessarily get a chance to participate unless there is a decision to allow it. Over the last few meetings of the ERB, there have been a couple of times when people have said they wanted to speak and have been allowed to do so under Introduction of Guests.

Mr. Ventura stated that, if the board wishes to include public comment on every agenda, there are a couple of sticking points. In particular, the ERB has administrative appeals that are heard in front of a hearing officer, go through the Attorney General's Office, and are heard by the board in executive session. While individuals in those cases have a right to speak at the appeal hearing, they do not have a right to speak in front of the board. If there is a public comment period, these people could try to speak at that time, which would mean the ERB attorney would have to also speak to the board in order to play fair in those appeals. In addition, there are a number of cases in litigation right now, and this could create the same scenario. For example, a couple of meetings ago, after the CES litigation had started, CES themselves wanted to address the board and the Chair said they could not because of the litigation. Mr. Ventura stressed that things said on the open record could be used in court.

Mr. Ventura commented that there is also the general principle of who is going to give public comment. At one board where he used to appear, there was a public comment section on their agenda, and people would sometimes speak for up to a half hour. He suggested that, if the ERB Board were to allow public comment, it lay out some guidelines so the public knows in advance what is permitted.

Mr. Ventura also pointed out that, if people do address the board under public comment, board members would be advised not to respond to them or enter into a discussion with them because it could violate the Open Meetings Act.

Mr. Ventura commented that, while he would like to see meetings of the board be as transparent as possible, it is important to consider all of these issues before deciding whether to allow public comment on agendas going forward.

Chairwoman Cameron noted that the ERB makes a strong effort to be as accessible as possible through its listening tours around the state and through meetings with stakeholders, and this system seems to be working well. As explained by Mr. Ventura, if someone does show up at the beginning of a board meeting and wishes to speak, the determination to allow them could be made at that time.

Chairwoman Cameron asked if there would be a problem if many people showed up to speak and the board were to allow only some of them to speak in the interest of time. Mr. Ventura responded that the board would have to allow all of them to speak.

Chairwoman Cameron recommended that further discussion on this item be included on the upcoming retreat agenda. If the board decides at that time that action is warranted, that can take place at a subsequent meeting of the board.

9. DISABILITY RETIREMENTS: RICK SCROGGINS, DEPUTY DIRECTOR

Mr. Scroggins reported on activity for the months of December and January.

- Under New Claims, eight were approved, and nine are still in process.
- Under Periodic Claims, eight were approved.
- There is one Disability-COLA claim in process.

Mr. Goff moved acceptance of the Disability Retirement Report, as presented. Mr. Magid seconded the motion, which passed unanimously.

10. AGE & SERVICE RETIREMENTS: MONICA LUJAN, DIRECTOR OF MEMBER SERVICES

Ms. Lujan presented the Retirement Summary Report for December and January. There were a total of 328 retirement applications received and approved. She noted that 20 retirements had 30+ years of service.

Mr. Goff moved acceptance of the Age & Service Retirements report. Mr. Craig seconded the motion, which passed unanimously.

11. MEMBER SERVICES PROCEDURES: LIZ LORANG, EXECUTIVE ASSISTANT AND PROCESS IMPROVEMENT SPECIALIST

Ms. Lorang made a presentation on Member Services Procedures. She distributed and reviewed process maps, one for accepting retirement applications and the other for payroll processing of new retirees.

Ms. Goodwin noted that Ms. Lorang is a graduate of the Denver Peak Academy, which teaches how to eliminate waste and improve efficiency in government, and her background and training have been a tremendous asset for the NMERB.

**12. MEMBER SELF SERVICE PORTAL PRESENTATION:
LEALIA NELSON, OUTREACH COORDINATOR**

Ms. Nelson made a presentation on the NMERB's self-service portal, with new features that includes a benefit estimator.

Chief Information Officer Lawrence Esquibel commented that the member self-service portal is an attractive site for hackers, so there is a WAF (web application firewall) in front of the portal that sanitizes the traffic before it ever gets there. He said the site takes numerous hits, day in and day out, from people looking for vulnerabilities. He said they get nowhere with that. He added that the NMERB is working with the vendor on dual factor authentication, which should be implemented within the next year. This will offer one more layer of security. He stressed that the NMERB highly values its members' identifiable information and protection of that is number one to the NMERB. Delays in offering more advanced features on the website at this time (including interactive features) is for the members' own protection.

13. DIRECTOR'S REPORT: JAN GOODWIN, EXECUTIVE DIRECTOR

a. Retiree Health Care Update

Ms. Goodwin reported that the Wellness Committee, which she chairs at the Retiree Health Care Authority, continues to meet to try to come up with cost-effective ways to reduce medical care costs there. NMRHCA had a successful financial statement audit, with a clean opinion.

b. Agency Activities

Ms. Goodwin said agency activities during December and January were detailed in a four-page report in the board packet.

Ms. Goodwin said NMERB now has four vacancies, three of which are about to be filled soon, and the fourth position is being actively recruited.

c. Legislative Update

Ms. Goodwin summarized legislative events during the recent 30-day session.

-- Senate Bill 244. The NMERB was working with the Foundation for Open Government and the Governor's Office to come up with something that would be agreeable to all. The bill had one hearing last week in Senate Public Affairs, but did not progress beyond that.

-- House Bill 85. The NMERB was watching this bill very closely, as it would allow people to purchase their sick leave time at retirement to get additional service credit. The

NMERB opposed this bill because the board's funding policy precludes any benefit increases until there is 100 percent funding. It was pointed out to the legislative committees that there are other remedies for people who are retiring with significant sick leave balances; for example, Santa Fe Public Schools allows a payout for unused sick leave for which retiring people can receive up to \$18,000, and many of the higher education institutions allow payout for sick leave. The arguments presented by the NMERB were not viewed as compelling, however, and the bill has passed both houses. The NMERB was able to get an amendment tacked onto the bill that would delay implementation for one year, allowing time for software changes and other adjustments. The NMERB has drafted a letter to the Governor's Office setting out its rationale for opposing this legislation.

d. Other

Ms. Goodwin announced that the COLA for this year will be 1.8 percent for members with more than 25 years of service and a pension benefit below the median of \$1,611. For most other members, it will be 1.6 percent, and for members who retired under the Disability COLA, it will be 2 percent.

Ms. Goodwin discussed an Op-Ed piece that appeared in the *Albuquerque Journal* a couple of months ago, authored by Dan Secrist of CWA Local 7076, that was critical of both the NMERB's and PERA's investment practices. They were concerned that the agencies were paying very high fees and not using low-cost strategies. Last night, Bob Jacksha, PERA CIO Dominic Garcia and she met with Mr. Secrist and two of his colleagues and explained the agencies' strategies for having low-cost investments wherever possible, but with the chief focus on net return. She reported that she felt it was a very successful meeting. The CWA also expressed their concerns that some of the alternative managers may be opposed to defined benefit plans and are lobbying against them. Ms. Goodwin said NMERB has asked Mr. Secrist for the names of these managers and would follow up if it were discovered any managers are in fact following those practices.

Ms. Goodwin said this year's board retreat is scheduled at 9:00 a.m. on Monday, April 9 at the Prairie Star Restaurant. Speakers will be Keith Brainard, research director at the National Association of State Retirement Administrators, and Ryan Falls, actuarial consultant with Gabriel Roeder Smith.

14. EXECUTIVE SESSION: 10:50 a.m. – 11:55 a.m.

- a. **New Mexico Educational Retirement Board v. Renaissance Private Equity Partners et al (session closed pursuant to NMSA 1978, Section 10-15-1(H)(7); State ex rel. Foy v. Vanderbilt Capital Advisors: Rod Ventura, General Counsel**
- b. **American Federation of State, County and Municipal Employees Council 18 et al v. State of New Mexico. (Session closed pursuant to NMSA 1978, Section 10-15-1(H)(7))**

- c. **Limited Personnel Matters – (session closed pursuant to NMSA 1978, Section 10-15-1(H)(2)) Compensation of Executive Director, Deputy Director, General Counsel and Chief Investment Officer and agency practices in regard to compensation**

Chairwoman Cameron moved that the board go into executive session pursuant to Section 10-15-1(H)(7) of the Open Meetings Act for purposes of discussing pending litigation, and 10-15-1(H)(2) for purposes of discussing limited personnel matters. Vice Chair Goff seconded the motion, which passed on the following roll call vote:

For: Chairwoman Cameron; Vice Chair Goff; Secretary Magid; Mr. Collins; Mr. Craig.

Against: None.

[Board was in executive session from 10:50 a.m. to 11:55 a.m.]

Chairwoman Cameron moved that the board come out of executive session. The only matters discussed during the executive session were pending litigation and limited personnel matters, as set forth in the agenda. Vice Chair Goff seconded the motion, which passed on the following roll call vote:

For: Chairwoman Cameron; Vice Chair Goff; Secretary Magid; Mr. Collins; Mr. Craig.

Against: None.

15. ACTION FROM EXECUTIVE SESSION

Vice Chair Goff moved to reject the settlement offer proffered in the case of American Federation of State, County and Municipal Employees Council 18 et al v. State of New Mexico et al. Mr. Magid seconded the motion, which passed unanimously.

Attorney Patricia J. Turner read the following motion:

ERB authorizes the preparation and transmittal of a letter from the Chair to the DFA Secretary, conveying insistence of the board and legal authority for action by DFA on or before thirty days from the date of the letter, effectuating the motions of the board dated December 8, 2017, establishing salary adjustments for Jan Goodwin, Rick Scroggins, Bob Jacksha, and Rod Ventura.


Chairwoman Cameron so moved. Mr. Magid seconded the motion, which passed by voice vote, with Mr. Craig voting against the motion.

16. NEXT MEETING: APRIL 20, 2018 – ALBUQUERQUE

Chairwoman Cameron stated that the board's annual retreat was scheduled on Monday, April 9.


16. ADJOURN

Its business completed, the Educational Retirement Board adjourned the meeting at 12:00 p.m.



Mary Lou Cameron, Chairwoman

ATTEST:



Larry Magid, Secretary