

**MINUTES OF THE**  
**NEW MEXICO EDUCATIONAL RETIREMENT BOARD**

**REGULAR MEETING**

**October 18, 2019**

**1. a. ROLL CALL: QUORUM PRESENT**

A Regular Meeting of the New Mexico Educational Retirement Board was called to order on this date at 9:00 a.m. at the NMERB offices at 8500 Menaul Boulevard, Suite A-319, Albuquerque, New Mexico. A quorum was present.

**Members Present:**

Ms. Mary Lou Cameron, Chairwoman  
Mr. H. Russell Goff, Vice Chairman  
Mr. Larry Magid, Secretary [by telephone, signed off 11:30 a.m.]  
The Hon. Tim Eichenberg, New Mexico State Treasurer  
Mr. Adan Delgado, Deputy Secretary, PED  
Mr. Steven Gluckstern [sworn in during meeting]

**Members Excused:**

Dr. Donald W. Duszynski

**Staff Present:**

Ms. Jan Goodwin, Executive Director  
Mr. Bob Jacksha, Chief Investment Officer  
Ms. Susanne Roubidoux, General Counsel  
Ms. Elena Cardona, Deputy General Counsel  
Ms. Liz Lorang, Executive Assistant, Board Liaison  
Ms. Monica Lujan, Director, Member Services

**Others Present:**

Mr. Allan Martin, Investment Advisor, NEPC  
Ms. Lynda K. Dennen, NEPC  
Mr. Joseph Simon, Analyst, LESC  
Ms. Chelsea Canada, Analyst, LESC  
Ms. Judith Beatty, Board Recorder  
[See sign-in sheet.]

b. Approval of Agenda

Mr. Goff moved approval of the agenda, as published. Mr. Eichenberg seconded the motion, which passed unanimously.

c. Approval of Minutes: August 23, 2019

Mr. Goff moved for approval of the August 23 minutes, as submitted. Mr. Delgado seconded the motion, which passed, with Mr. Eichenberg abstaining.

d. Introduction of Guests

Chairwoman Cameron welcomed staff and guests.

2. SWEARING IN OF NEW BOARD MEMBER – STEVEN M. GLUCKSTERN

Mr. Gluckstern was sworn.

3. CONSENT AGENDA:

a. Board Travel

No requests.

4. APPROVAL OF 2020 BOARD MEETING DATES

The August Investment Committee and Board of Trustees meetings were moved from August 20/21 to August 13/14 at Mr. Gluckstern's request.

Mr. Eichenberg moved for approval of the 2020 Board Meeting dates, as amended. Mr. Gluckstern seconded the motion, which passed unanimously.

5. ERB COMMITTEE APPOINTMENTS

a. ARP Committee Appointments

Chairwoman Cameron requested approval of the following appointments:

-- Dr. Duszynski; Mr. Magid; Mr. Gluckstern

Mr. Delgado moved approval of these appointments. Mr. Eichenberg seconded the motion, which passed unanimously.

**b. Evaluation Committee Appointments**

Chairwoman Cameron requested approval of the following appointments:

- Mr. Magid; Mr. Goff; Ms. Cameron

**Mr. Gluckstern moved approval of these appointments. Mr. Delgado seconded the motion, which passed unanimously.**

**c. Investment Committee Appointments**

Chairwoman Cameron requested approval of the following appointments:

- Mr. Magid; Mr. Goff; Ms. Cameron

**Mr. Eichenberg moved approval of these appointments. Mr. Goff seconded the motion, which passed unanimously.**

**d. Audit Committee Appointments**

Chairwoman Cameron requested approval of the following appointments:

- Mr. Eichenberg; Mr. Gluckstern; Ms. Cameron

**Mr. Eichenberg moved approval of these appointments. Mr. Goff seconded the motion, which passed unanimously.**

**6. PUBLIC RULE HEARING: AMENDMENTS TO NMERB RULES: ELENA CARDONA, DEPUTY GENERAL COUNSEL, PRESIDING HEARING OFFICER**

**2.82.2.9 NMAC – Regular Members**

**2.82.2.11 NMAC – Employees Excluded from Coverage**

**2.82.3.8 NMAC – Salary Covered; Salary Excluded**

**2.82.3.9 NMAC – Refunds of Contributions**

**2.82.3.10 NMAC – Refunds of Contributions in the Event of Death of Member or Beneficiary**

**2.82.3.12 NMAC – Purchase of Non-Reported Services; Failure to Deduct Member Contributions**

**2.82.4.8 NMAC – Earned Service Credit**

**2.82.4.10 NMAC – Return to Work**

**2.82.5.10 NMAC – Computation and Commencement of Retirement Benefits**

**2.82.5.11 NMAC – Effective Date of Benefit**

**2.82.5.13 NMAC – Options**

**2.82.5.15 NMAC – Return to Work Program**

### **2.82.5.16 NMAC – Return to Work .25 FTE or Less**

Ms. Cardona said the purpose of this hearing is for the board to receive public comment on proposed amendments to the board's current rules and regulations. She said public notice of this hearing was published in the New Mexico Register on August 13, and posted on the ERB website and sunshine portal beginning on August 13 through today. Copies of the notice have been available in the ERB offices since its publication, and the proposed rule amendments were also posted on the sunshine portal and ERB website beginning on August 13. A transcript of today's hearing will become a part of the record.

Roll was called, with the following board members present: Chairwoman Cameron; Mr. Goff; Mr. Magid; Mr. Delgado; Mr. Eichenberg; and Mr. Gluckstern.

Ms. Cardona discussed procedure for today's hearing.

General Counsel Susanne Roubidoux offered Exhibits 1 through 5 into the record: Notice of Public Rule Hearing; proposed amendments to Rule 2, Membership; proposed amendments to Rule 3, Member and Administrative Unit Contributions; proposed amendments to Rule 4, Service Credit; and proposed amendments to Rule 5, Retirement Benefits.

#### **a. Rule 2.82.2 - Membership (Rule 2)**

Oral or written comments from the public: None

Ms. Roubidoux discussed the reasons behind the changes in Rule 2.

Ms. Roubidoux said the language in Rule 2.9 was changed because it is driven by House Bill 360, which eliminated the \$15,000 earnings limit for retirees working under the ERB program formerly known as the Return to Work exception. Sections A, B, C and D delete the phrase, "Return to Work exception," as it no longer accurately describes retirees who work .25 FTE or less. In addition, the word "participants" is replaced by "retired members working," as "participants" refers to individuals in ARP. She said an additional change (subsection F) is a new provision which provides that certain types of retired PERA police officers who receive a pension under PERA who haven't suspended employment, and who were hired by a local administrative unit before July 1, 2019, are effectively grandfathered and not required to pay contributions to the fund.

**Mr. Gluckstern moved to adopt the proposed amendments to Rule 2, as presented. Mr. Goff seconded the motion, which passed unanimously.**

#### **b. Rule 2.82.3 - Member and Administrative Unit Contributions (Rule 3)**

Oral comments from the public: None

Written comment from the public: Ms. Roubidoux stated that a written comment on Rule 3 was received from Tim A. Berry, residing at 5008 Calle de Luna, N.E., in Albuquerque. [Exhibit 6 of the record]. Mr. Berry stated that his comments specifically pertain to the proposed language in Rule 3.9, which states that contributions to the fund made after July 1, 2019 are nonrefundable. Mr. Berry points out that, prior to the passage of House Bill 360, the word “not” was struck so that House Bill 360 states that PERA retirees shall make contributions to the fund after July 1, 2019, so the term “nonrefundable” is beyond the authority of this board to make PERA contributions nonrefundable. Mr. Berry also points out that in other sections of House Bill 360, the legislature specifically included “nonrefundable,” for example, in Section 22-11.25.1, concerning retired members of ERB returning to work at a level of one-fourth or less FTE after July 1, 2010, that the legislature specifically stated that those employee contributions would be nonrefundable. Mr. Berry’s point is that, because the statutory change did not use the word nonrefundable, the rule should not state that it’s nonrefundable.

Asked by Mr. Eichenberg to comment, Ms. Roubidoux said Mr. Berry raised an interesting point that could have legal implications. She commented that the legislation was originally introduced as Senate Bill 14 and there were numerous changes to the language. It was subsequently introduced as House Bill 360, where it underwent numerous additional changes. She said she believed the omission of the word nonrefundable was in error, and she believed it was the intent of the legislature to make those PERA contributions nonrefundable. She recommended that the board reject the proposed change at Rule 3.9 and go to the legislature at the next session and attempt to have the word nonrefundable inserted into the statutory provision that affects PERA retirees.

**Mr. Eichenberg moved to reject Rule 3.9, paragraph B. Mr. Goff seconded the motion.**

Responding to a question raised by Mr. Gluckstern addressing what appears to be inequity between PERA and ERB retirees, Ms. Goodwin said ERB and PERA are sister pension funds, and many people have service in both plans, and so she would argue that PERA retirees and PERA members have a stake in what happens to the ERB. For a long time, the ERB has required all ERB retirees within the Return to Work program to pay nonrefundable contributions. Similarly, if a PERA retiree returns to work for a PERA employer, and that’s very limited under PERA statutes, they also pay contributions to the PERA employer. ERB thought it was equitable that if a PERA retiree is working for an ERB employer, they should also pay contributions.

**The motion passed unanimously.**

**Mr. Eichenberg moved approval of Rule 3.8, 3.10 and 3.12, as amended. Mr. Gluckstern seconded the motion, which passed unanimously.**

**c. Rule 2.82.4 –Service Credit (Rule 4)**

Written comment from the public: None

Ms. Roubidoux stated that Rule 4.8, subsection J, has a new provision providing that PERA employees employed by an LAU do not earn service credit unless the retiree has suspended their benefit. She said this is an existing provision in the Educational Retirement Act, and the ERB added this subsection in response to a question frequently raised by PERA retirees, which is whether they can earn service credit while still getting a retirement benefit from PERA. She said Rule 4.10 is clarifying language that states that service credit cannot be earned, purchased or credited for any time that a retired member is employed by an LAU unless they have suspended their benefit.

Oral comments from the public:

Speaker Senator Michael Padilla stated that, based on what he has heard in meetings he has had with many people present today, he believes there is massive confusion around some provisions in Rule 4. He asked if one class of retirees was being treated differently. He said he was with a group of former PERA police officers today that returned to work as ERB school safety officers, and he was present for one in particular who retired in 2002, went back to work in 2003, and received a letter saying that the ERB would no longer take contributions into the plan. He went on to work for 16 years, and then just had \$250 deducted from his biweekly pay.

Ms. Roubidoux explained that a provision was enacted in House Bill 360 that applied to retired PERA police officers hired prior to 7/1/2019 by an LAU who are certified under the Law Enforcement Training Act and who have not suspended their retirement benefits. She said the ERB developed a form that it provided to the LAUs for that exemption, where the employer certifies the individuals they believe qualify for it. She commented that a number of school districts have submitted those applications and the ERB has approved many of them.

Senator Padilla said he appreciated the clarification and added that he thought there was a communication issue or a training issue with the ERB in terms of explaining this to people who call the ERB office.

Ms. Roubidoux agreed that there had been a lot of misinformation about retired PERA police officers specifically. There are certain requirements such as that the person must be hired before July 1, 2019, they must be certified under the Law Enforcement Training Act and meet other requirements. She stressed that the ERB needs to know who these individuals are for recordkeeping purposes, since this kind of exemption is not automatic. She said there is always room for improvement with respect to communication on both sides, and the ERB is happy to do what it could to improve its own communication efforts.

Ms. Goodwin said the only way the ERB is currently allowed to provide earned service credit to someone who's retired is that they have to have suspended their retirement benefit for the other plan. She explained that it is harmful to both plans if people retire earlier than they would otherwise, that pension plans work by having contributions come in and earn investment income over time.

Speaker Danny Gonzales stated that he was a PERA retiree who worked for 25 years, then went to work for UNM. He said he worked there for six and a half years without making a contribution, and never would have gone to work there in the first place had he known he was going to have this deduction from his pay. He said it was like throwing his pay in the trashcan.

Speaker Janice Burford said she was in her 41st year of teaching, and came to New Mexico from Texas in 1990 after working there for 12 years, but was unable to buy those years and had to start in New Mexico all over again. She said ERB employees subject to the Rule of 75 were grandfathered in after protesting the Rule of 80 imposed by the ERB in 2010, and while ERB employees received notice about this, PERA retirees didn't. She commented that at least ERB employees got to protest.

Speaker Robert Chavez stated that he was a retired lieutenant from the Albuquerque Police Department who retired in May 2002 after 21 years, and then was hired by APS. He said he paid into ERB retirement for a year and a half until he was notified that ERB would not take his contributions, and his contribution for that period was refunded. He said he received no notice that his paycheck would have \$500 a month deducted from it, and considered this extortion. He felt he was being penalized.

Speaker Manuel Marquez asked why PERA police officers were not grandfathered in.

Ms. Goodwin responded that the legislature was concerned about having sufficient public safety people in the schools, and so created this exemption for police officers who had already been hired. She said there were legislative hearings on this provision before it was adopted.

Speaker Deborah Nasum stated that she was currently in a long-term substitute position at Taylor Middle School, and was a retired city employee collecting from PERA. She said she didn't find out about the "contribution extortion" until she received the first paycheck. She said she didn't hear a thing about it "until the money was gone" and probably would have made a different decision in terms of where she is now in a long-term teaching position. She said APS needs teachers and substitute teachers. She commented that the ERB "is like a club we have to pay dues to and I don't even belong to." She said it was incredibly unfair to be paying \$3,000 a year in contributions without a COLA. She predicted that APS would see its numbers drop as a result of this.

Speaker Chester Fuller stated that he was a PERA retiree who has been teaching at APS for about 19 years. He said his main concern was that schools are already in need of teachers, educational assistants and custodians. He said there are not enough people to cover classrooms.

Ms. Cardona asked if there were additional comments about Rule 4. She said comments being made now were pertaining to Rule 3.

Previous speaker Robert Chavez said he didn't think anyone present would have a problem contributing to ERB if they thought there would be an end result of some kind, such as a refund.

Public comments were closed on Rule 4.

Responding to a question from Mr. Eichenberg about comments made by speakers Chavez and Fuller, Ms. Roubidoux stated that someone can only retire out of one system; in other words, they cannot retire from one system and keep working in the other; they have to cease all employment before they can retire.

Member Services Director Monica Lujan said that was correct. If someone is working with ERB and then starts working for PERA at the same time, and is 30 years into the ERB (for example), they have to stop all employment for both in order to retire. She added, however, that someone could stop working for the ERB and continue working for PERA, and then when that person is ready to retire, receive a reciprocity from each fund for the number of years worked under each. She said someone couldn't collect retirement from one fund while continuing to work for the other.

Mr. Goff expressed concern about comments from speakers about grandfathering, where some people were grandfathered in and others weren't. He said there seemed to be unequal distribution and wondered if this should go to the legislature for additional work.

Ms. Roubidoux responded that the law under the Educational Retirement Act states that PERA retirees shall not make contributions to the fund, and this was in effect for several years until House Bill 360 changed the language to strike the word "not".

Ms. Goodwin added that these statutory amendments were the product of the ERB stakeholder group, which met for many months in 2018 and came up with a plan that was agreed to unanimously by all of the members, which included representatives of active and retired employees as well as employers. She stressed that ERB staff did not suggest this unilaterally; rather, it was a recommendation proffered by the stakeholder group.

Speaker Chavez said he found this very confusing. He said that, in 2013, rules, policies and procedures were established with how PERA employees were going to be treated under the ERB, but it was in 2013 that they were all grandfathered in and didn't have to pay into this contribution. He said now it is 19 or 20 years later and they're all just starting to have to pay into it, which he said he never agreed to. He said he and others present today were hired under different provisions.

Ms. Roubidoux said she wanted to reiterate that this is what the statute currently requires, and the language about being grandfathered prior to 2013 is not in House Bill 360.



Ms. Goodwin commented to Mr. Chavez that what she believed happened in his case was that, when he initially began his employment with APS, they incorrectly deducted the contributions from his paycheck, which is why they reimbursed him.

Mr. Chavez said some people worked for APS for 10 or 15 years and got a check for all those years of contributions. He asked if that was a mistake, too, and Ms. Goodwin responded that it was. She commented that employers make mistakes, and every now and then the ERB hears from someone whose employer has not made contributions for them.

Mr. Chavez said he felt he and others were being targeted. When he first started work at APS, there were 450 of them, and now there are 200, and APS is now hiring contractors to do the work he and others did previously. These contractors are not paying into ERB, so he thought he and the others were being penalized.

Ms. Goodwin responded that some of the contracts might be invalid and contributions likely due. She said ERB is working with APS and other employees on this issue.

Ms. Cardona noted that a lot of comments have been about contributions, which pertains to Rule 3, which has been adopted by the board.

**Mr. Gluckstern moved approval of Rule 4. Mr. Goff seconded the motion, which passed unanimously.**

Speaker Deborah Nasum, retired PERA employee, asked if people should go to their representatives and state senators.

Asked by Chairman Cameron to comment, Senator Padilla stated that he would be happy to work with anybody on this matter, which he thought was very important. He said he felt people who pay into either retirement plan should receive a prorated benefit for their service and their work when they retire from one plan and go to work for another. He expressed concern about an exodus from public jobs, commenting that there is a massive job fair in his district every summer, and for three years in a row, APS, the Las Cruces schools and the Gallup schools have been there. He said APS is short by 200 teachers.

**d. Rule 2.82.5 – Retirement Benefits (Rule 5)**

Oral comments from the public:

Speaker Robin Sena stated that she taught at Sandia High School for 37 years and chose not to do the one-year layout. She said she retired six years ago and then went to work as a substitute teacher. She commented that she found it very disheartening to receive the letter in June with the new options. She said she was a special education teacher for the high school, working in the autism program. She asked why some people were able to earn \$18,000 or so, depending when they retired, and she wasn't. She said she wasn't even limited to \$15,000 anymore. She said there should be some consideration for teachers who have given their heart

and soul to APS and want to continue doing what's right for the community because there is a desperate need for teachers. She said 1100 substitutes were transferred by APS to Kelly Services, and only 100 have not sat out the year. She pointed out that the staff at ERB is very rude and nasty to her when she calls the office.

Ms. Goodwin said she would remind the board that there was a proposal to eliminate the \$15,000 earnings cap. In order for the ERB to be considered a qualified 401(a) pension plan under the IRS Code, it has to have a bona fide termination for someone before they can begin receiving their pension, which does not mean retiring one week and returning to work the next week and going to work full time. If someone wants to work without taking the one-year layout, they can only work .25 FTE, and this was in order to conform to IRS guidelines to meet the 401(a) requirements. She stressed that the ERB must continue to be a qualified plan because, when members pay contributions, they pay them pre-tax; when the ERB plan earns investment income, it does not pay any taxes on it. She also noted that the IRS does not like dollar caps, like the \$15,000 cap, so it can't use that anymore.

Responding to Ms. Sena, Ms. Goodwin said the ERB has told APS that using Kelly Services does not change who can work according to statute and rule and whether or not contributions are due. In other words, if someone retires at the end of the school year and wants to come back with Kelly Services, they still have to follow ERB rules. She said Kelly Services has no effect on who can work, how much, and whether or not contributions are paid.

Responding to Ms. Sena's question about why her friend who retired this year is back at APS earning .25 FTE, or \$18,000 without sitting out a year, Ms. Goodwin said that was perfectly fine. She said her friend didn't have to sit out a year to work .25 FTE.

Ms. Goodwin reiterated that this was the product of the stakeholder group's recommendations. She said active employees were represented by the different unions at the stakeholder group, and employers represented there included APS, UNM, NMSU, and CNM, as well as retirees.

Ms. Sena said there was a lot of confusion. She said, "I still think that there has to be some way to make this right for us, and for our city and for our state and for our kids. This is wrong on so many levels." She asked how this could be fixed.

ERB Chief Investment Officer Bob Jacksha commented to Ms. Sena that the way to change this was to get the IRS to change the rules.

Ms. Sena said there is a great deal of confusion about the .25 FTE, and people have different ideas about how it applies, and to whom. She said she has tried talking to ERB staff, but finds them to be rude and nasty, and she hesitated to call the ERB office or even walk into the building and ask questions.

Ms. Goodwin stressed that if there is ever an instance where staff is rude to someone, the ERB would like to know about it. She said the ERB can't do anything about it if this isn't reported.

Speaker Fred Rose, UNM Retirees Association, stated that he attended the stakeholder meetings. He commented to people in the audience that it was not the board's fault that people had the wrong information; rather, it was the responsibility of the stakeholder representatives for failing to provide the correct information.

Speaker Gerald Greenhouse stated that he has a master's degree in special education, but has also worked in other positions for APS, including as activities director and athletic director at Garfield Middle School. He has worked at Taylor Middle School, as well as other schools. He said he has been around APS since 1980. He said he loves his work, and finds it depressing that he can only work one day a week. He said he retired in 2014 and now substitute teaches in the autism program and questioned how he was going to tell his students that he could only work one day a week in the classroom.

Speaker Janice Burford said the people in the ERB office in Albuquerque have been very helpful to her, but gave her incorrect information. She said she retired and was told that she could do volunteering, only to find out that she couldn't. She said she sent a "rebuttal letter" to Santa Fe, and got a letter back saying that "you're not going to get your year off, too late, you volunteered." She added, "Okay, granted, my bad, I didn't read, they sent me this much in the mail of retirement clauses that told me I can't volunteer, you can't even be on school property." She said she suspended her retirement, since she couldn't take another year off. She said she has a master's degree and works at the Aztec Complex, which is a lockdown facility. She said there are experienced teachers who want to go back to work.

Dubra Karnes-Padilla, UNM Retirees Association, suggested that, given some of the misunderstanding about the application of the .25 FTE rule, the ERB send a mail-out explaining to people what the limitations are and how it applies. She said there seems to be a lot of confusion.

Ms. Goodwin responded that the ERB has already done that.

Karen Mitchell stated that she retired from the Clovis Municipal Schools after 25 years, and substitute-teacher in two rural schools there. She said they are very hard up for substitutes. She said it would have been nice if teachers had been told before they retired years ago that they would have to lay out a year before they could substitute teach. She commented, "It kills me to see an 18 year old or 19 year old kid come in there and read a book or play on the phone while the kids are sitting there."

Ms. Goodwin clarified for Ms. Mitchell that people who work .25 FTE or less in retirement will pay contributions effective July 1, 2020.

Speaker Gerald Greenhouse said he works at Milne stadium taking tickets and gets a \$43 stipend, and asked if that applies to the .25 FTE rule. Ms. Goodwin responded that it does.

Joy Lopez, retired teacher, asked if the one-year layout is an arbitrary number. She said she is an hourly employee and would not be going back to work as a teacher, and asked if she could be exempted from laying out for a year. Ms. Goodwin responded no. She explained that the year layout was recommended by the actuary and in response to the IRS wanting a reasonable layout period. The actuary determined that a one-year layout was needed in order to have return to work be neutral actuarially to the fund.

Ms. Goodwin pointed out that ERB retirees are always allowed to suspend their benefit and earn additional service credit. She commented that people are better off doing that rather than doing return to work. She said people love the idea of return to work, though, because they get two paychecks, but it does not pay off for them economically. She commented that the great thing about the ERB benefit is that there is no cap on the benefit, so it can never be maxed out, which is a feature of the ERB retirement plan that is shared by very few benefit plans in the U.S.

Ms. Lopez commented that Kelly Services has mobile vans going to parking lots trying to get people to come and substitute, yet she can only work five days a month with 37 years of teaching experience and a master's degree. She said this made no sense.

There was no one from the floor wishing to submit a written comment.

Written comments from the public:

Ms. Roubidoux stated that the ERB received several written comments that appear to pertain to Rule 5.

Ms. Roubidoux stated that a written comment was received from James Ratliff on August 16, 2019. Mr. Ratliff is a science educator at Tibbetts Middle School, Farmington Municipal Schools. His comments pertain to the recent changes in House Bill 360. Mr. Ratliff states that there was no consideration of the welfare of New Mexico students with this legislation, and that limiting experienced and licensed educational retirees will be counterproductive to the welfare and education of New Mexico students. Mr. Ratliff additionally commented that whoever came up with the changes in House Bill 360 has spent little time in a public school and never witnessed the tremendous addition that a substitute teacher makes in the classroom, and that limiting substitutes to five days a month was "wrongheaded bean counting." [Exhibit 7.]

Ms. Roubidoux said a comment was received on August 16, 2019 from Rene Yoder, Benefits Director at CNM. Ms. Yoder had several comments, the first not relating to Rule 5, which was a procedural question about types of domestic partner affidavit documents the ERB would accept. Ms. Yoder's second comment appears to pertain to Rule 5.15, subsection B, about retirees who retired prior to January 1, 2001 and subsequently removed themselves from

retirement. Ms. Yoder asked if the word “from,” which is in the third line from the bottom of that proposed language, should instead say “after.” Ms. Yoder also had a comment on Rule 5, subsection D, which is that the return to work form does not have to be notarized and that the word “notarized” should be removed. Ms. Roubidoux said that the provision regarding notarization was not presented to the public as a proposed change and therefore it could not be changed at this rule hearing but would be kept in mind for future rule changes. Ms. Roubidoux said Ms. Yoder’s last comment, in reference to Rule 5.16, was that she didn’t agree with the requirement that an employer sign off on the status of a retiree who is proposing to work .25 FTE or less because ERB requires the employer to sign off on the status of the retiree, but the employer can’t sign off on the form until the person is employed, and the ERB is saying they can’t return to employment until they are approved, so this is like the dog chasing its tail. [Exhibit 8.]

Ms. Roubidoux said a written comment from Donna Granko, a retired licensed educator and “proud substitute from Farmington Municipal Schools” was received on August 21, 2019, and appears to pertain to Rule 5. Ms. Granko was expressing her “extreme disapproval” of the recent changes in House Bill 360, pointing out that limiting an experienced retired educator to .25 FTE was “absurd and a flagrant betrayal of the agreement I understood to be in place when I retired.” Ms. Granko felt she was being punished for not only laying out a year, but by the removal of the \$15,000 earnings limitation. She said these changes supposedly generate \$2.6 million, but that is a “drop in the bucket” and that she would contribute more if she could work under the \$15,000 exception. Ms. Granko urged the ERB to rescind or modify this rule. [Exhibit 9.]

Ms. Roubidoux said a written comment from Sue Fox was received on August 27, 2019, stating that she retired on May 1, 2017 after 35 years, and taught college and developmental English for 33 years at CNM as a full time instructor. Prior to that, she was a special education teacher at Manzano High School, and then after retiring returned to work part time at CNM under the \$15,000 earnings cap. Ms. Fox asked that the board consider grandfathering in educators who retired when the \$15,000 return to work exception was in place. [Exhibit 10.]

Ms. Roubidoux said the last comment was received on October 11, 2019 from Chris Pash, executive director of human resources at Farmington Municipal Schools. Mr. Pash’s concern was that working five days a month or 37 ½ hours a month will significantly affect the two retiree coaches that the Farmington Municipal Schools use, and that because the \$15,000 earnings cap has been removed, the schools were in jeopardy of losing these coaches. [Exhibit 11.]

**Chairwoman Cameron moved to adopt the proposed amendments to Rule 5, as presented. Mr. Goff seconded the motion.**

Mr. Delgado said he wanted to point out, as he did at the last meeting, that the ERB continues to hear the concerns of school districts whose ability to bring qualified substitutes

into the classroom is greatly constrained by this rule change, and that injures their ability to provide quality educational services to their students.

In response to a request from Mr. Delgado, Ms. Roubidoux described the changes made in Section 5.16 Return to Work .25 FTE or Less.

**The motion passed unanimously.**

Ms. Cardona stated that the attendance sheet would be entered as Exhibit 12, and that the rules adopted by the board would be filed at the State Records and Archives in accordance with the State Rules Act and would become effective on the date of publication in the New Mexico Register. Ms. Cardona thanked the Board and members of the public for their attendance and participation in the rule hearing.

The rule hearing was adjourned at 12:13 p.m.

[Break.]

#### **7. 2020 LEGISLATIVE PROPOSAL: JAN GOODWIN EXECUTIVE DIRECTOR**

Ms. Goodwin said the board will recall that, this year, the ERB did a very large bill that affected benefits for new members, tried to collect all possible contributions that weren't now being collected, and tried to make Return to Work more equitable. In addition, the bill included a request to increase the employer contribution by a total of three percent, or one percent each year for three years. That was removed from the bill, and the ERB was instead given an employer contribution of .25 percent, and PERA was given a similar employer contribution increase. As a consequence, the bill changed the funding period from 70 years to 46 years, which is still outside of the board's 30-year funding policy.

Ms. Goodwin stated that, in order to get closer to the 30 years, the ERB has spent all summer working on this bill with the stakeholder group to come up with a proposal. It essentially does two things:

-- For the first three years, it brings in the equivalent of a one percent contribution increase from the employer. Higher Ed funding is very difficult and very complicated, which came to the fore in the last session between the salary increases that were proposed for Higher Ed not being fully funded, as well as the one percent contribution increase not being fully funded for Higher Ed while being fully funded for K-12. As a compromise, the ERB has come up with language stating that the money will be transferred by the state equal to the one percent employer contribution increase for each of the first three years. The hope is that, by the fourth year, the legislature, Higher Ed, and the Executive will have worked out the funding formula so that Higher Ed will be properly funded for any employer contribution increase in the future..

-- The ERB is also asking for two payments of \$50 million, the first in year one and the second in year three. Although Higher Ed is still somewhat unsure about whether the funding formula will be worked out by year four, the ERB feels it needs to move forward with something.

LESC analyst Joey Simon said their requested language is in this final version of the proposal, so they can support it.

Ms. Goodwin noted that the stakeholder group was made up of all of the different unions that represent the members. It also had retirees from both K-12 and Higher Ed and all of the major employers, and the Superintendent's Association was always invited.

Ms. Goodwin noted that for the ARP, similar additional language was proposed in Section 22-11-49 of the Educational Retirement Act stating that any other increases in the employer contribution would be paid to the defined benefit plan.

Responding to a question asked by Joey Evans, UNM, Ms. Goodwin clarified what the current contribution rates are for employees and employers.

Ms. Goodwin commented that the contribution rates were this high because the actual cost of the pension benefit is about 13 percent, so the rest goes to pay interest on the unfunded liability. She said this is why she is in such a hurry to get the unfunded liability paid off, since then the ERB can lower the contribution rate and cease the COLA reductions for current retirees.

**Mr. Goff moved for approval of the legislative proposal, as presented. Mr. Gluckstern seconded the motion, which passed unanimously.**

**8. INVESTMENT REPORTS: BOB JACKSHA, CIO**

**a. Asset/Liability Study – NEPC**

Mr. Jacksha stated that ERB policy requires this study every three years, and this is the third year.

NEPC advisor Allan Martin gave a preliminary statement and introduced NEPC pension actuary Lynda K. Dennen, who presented this report. Ms. Dennen said she worked with the ERB's actuary to get the information used to project the assets and liabilities of the plan.

**Key findings:**

- The Plan is estimated to be 62.7 percent funded as of June 30, 2019
- Required contributions are currently at 20.8 percent of payroll for FYE 2020 and are expected to increase gradually for the next ten years.

- The current policy allocation is expected to produce an average return of 8.6 percent per annum over the next 30 years (based on 12/31/18 forecasts). This exceeds the current expected return on assets of 7.25 percent. Due to current market headwinds, the 5-7 year asset allocation is expected to return 7.7 percent per year on average.
- Capital markets backdrop continues to support a well diversified, globally balanced approach. Current long-term asset allocation policy target is a well-diversified portfolio that strives for return without taking undue risk.
- This allocation and liability analysis supports important decisions which were made to improve financial outcomes: increase private equity and real assets exposure; decrease public equity exposure; decrease opportunistic fixed income; and decrease GAA allocation

**b. Investment Committee Report**

Mr. Jacksha reported on action taken by the Investment Committee at yesterday's meeting:

- Committed \$50 million to Eastern Timberland Opportunities III.
- To employ the additional percentage point allocated to the private real estate portfolio in the most recent asset allocation, committed another \$10 million to RAM Real Estate Vi, \$20 million to Sares Regis Fund III and \$25 million to Realterm Logistics Fund III.
- Reviewed the infrastructure performance report for the quarter. The program is doing very well with an overall return of 6.5 to 7.0 percent.
- Approved a four-year extension for US Agriculture.
- Added Värde as manager to the Opportunistic Credit portfolio and approved an allocation of \$102 million.

**c. Other Investment Reports**

None.

**9. ENVIRONMENTAL, SOCIAL AND GOVERNANCE POLICY: JAN GOODWIN, EXECUTIVE DIRECTOR, AND SUSANNE ROUBIDOUX, GENERAL COUNSEL**

Ms. Roubidoux stated that, at the last board meeting, staff was asked to look into various options for an Environmental, Social and Governance (ESG) policy for the ERB. She commented that there is a wide spectrum in terms of what funds of this size and larger are doing. For example, while CalSTRS has significant staff and resources devoted to evaluating investments



for their ESG issues, Colorado PERA has taken the approach that there are many issues facing the world, but they do not have the staff or resources necessary to evaluate all investments from an ESG perspective. Ms. Roubidoux said that, based on discussion at the last meeting, the ERB Board of Trustees appears to favor the Colorado approach. With that in mind, staff drafted a short policy statement, which was presented to the board for their review.

Mr. Gluckstern said he felt the preamble to the draft policy was not necessary and raised more questions than answers. He said the statement should essentially say that this is not in the ERB's mandate and is best decided by the legislature.

Mr. Delgado asked why the ERB needs this policy.

Ms. Goodwin responded that it is being driven by concerns over current events, such as private prisons housing immigrants. Right now, there are two companies in the S&P 400 Index which house some of these detainees. Because the ERB is invested in that index fund, it has been getting a lot of pressure from its members as well as different groups, including Albuquerque Interfaith and the Santa Fe Dreamers Project, and the ERB received a letter two weeks ago from a substantial proportion of the UNM Law School faculty saying the ERB should be divesting from these investments. She explained that the ERB Investment staff internally manages the S&P 400 Index Fund, and selling the two companies of concern would mean the index would not be valid for the ERB.

Ms. Goodwin said one letter the ERB received states that it should not be investing in any company that does harm to anyone, which is impossible to define. She commented that she could identify several harms in each of the ERB's portfolio companies, which include drug manufacturers, auto manufacturers, candy manufacturers, and gun manufacturers. She questioned whether the ERB wants to get into the business of deciding which companies it shouldn't invest in, and said it would be much more effective to work with other public pension funds that engage with these companies to try to drive behavior.

Responding to Mr. Delgado, Mr. Jacksha said he hasn't read the constitutions of all U.S. states, but doubted that any of them discuss ESG. While some states have passed laws saying they won't invest in this or that, most of this comes from institutional boards.

Mr. Jacksha said CalSTRS has an ESG staff group that is substantial. They have hundreds of employees, so have the ability to devote staff to this issue.

Mr. Jacksha noted that the ERB has a proxy voting policy, where it votes a lot on governance issues in public companies it owns, and some of that touches on environmental and social issues, as well.

Mr. Eichenberg commented that he found the draft policy to be "incredibly long."

**Mr. Goff moved for approval of the policy, as presented. Chairwoman Cameron seconded the motion, which was defeated 3-2.**

Ms. Goodwin asked for direction, and Mr. Gluckstern offered ideas for an abbreviated policy statement that would be two or three sentences.

Responding to Mr. Delgado on what it would take for the ERB to implement this policy, Ms. Goodwin said it would likely take a dedicated staff of three to five people.

Mr. Martin said San Francisco has a \$25 billion fund, and has an ESG director and analyst who together probably receive \$300,000 to \$400,000 a year. He said they were hired in response to an effort to force the fund to divest of fossil fuel, which would have been very damaging to the fund. He cautioned against a slippery slope, however, as that fund has no firearms, no thermal coal, no Sudan, and no tobacco. He added that it cost CalPERS \$3 billion to divest from tobacco.

Mr. Jacksha said he would prefer a proactive approach by finding socially and environmentally good investments that make a lot of financial sense, which the ERB occasionally does.

**10. EQUIPMENT DISPOSAL LIST: LAWRENCE ESQUIBEL, CHIEF INFORMATION OFFICER**

Mr. Esquibel presented the list for approval.

**Mr. Eichenberg moved for approval. Mr. Delgado seconded the motion, which passed unanimously.**

**11. DISABILITY RETIREMENTS: MONICA LUJAN, DIRECTOR OF MEMBER SERVICES**

Ms. Lujan presented this report for August and September. She said eight disabilities were approved, and one was approved under periodic review.

**Mr. Goff moved for approval. Mr. Gluckstern seconded the motion, which passed unanimously.**

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

Ms. Lujan reported that 255 retirements were approved for the August and September period, broken down as follows: 5 disability applications under age 60; and 27 reciprocities; 223 regular members. One PERA reciprocity is listed, but the benefit was recalculated upon the beneficiary's death and was not a regular retirement.

**Mr. Gluckstern moved for approval. Mr. Eichenberg seconded the motion, which passed unanimously.**

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

**a. Retiree Healthcare Update**

Ms. Goodwin stated that there was no update to report on since the last board meeting.

**b. Agency Activities**

Ms. Goodwin referred to the Activity Report by Department, noting that the agency continues to be busy.

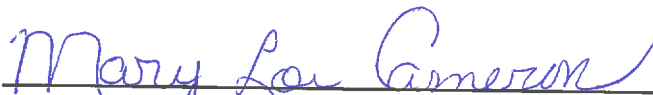
**c. Other**

Ms. Goodwin stated that, two weeks ago, she received a letter from one of the schools about one of their retirees who had gone back to work and was working under the \$15,000 cap, even though the rules had changed. Her pension amount was \$1,400 a month. She is 72 years old, and was working as an assistant cook for \$1,200 a month. Because of the rules, the ERB was supposed to suspend her retirement for two months, so that earning the \$1,200 was going to cost her \$2,800 in retirement benefits. Ms. Goodwin commented that this didn't seem to make sense, and also didn't feel right. She said Monica Lujan had her group go back to look through all the other people the ERB was looking at reducing retirement benefits for, and basically gave them a pass because of all the changes. The school didn't understand the rules, and the ERB didn't want to unduly penalize its retirees.

Ms. Goodwin said the ERB will look at all of the rules where it might penalize a retiree like this and try to come up with something where the penalty is a better reflection of the economic impact on what the retiree did. She said staff plans to bring forward a recommendation in the next few months.

**14. NEXT MEETING: FRIDAY, DECEMBER 6, 2019 -- ALBUQUERQUE**

Its business completed, the Educational Retirement Board adjourned the meeting at 1:45 p.m.

  
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Mary Lou Cameron, Chairwoman

ATTEST:



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Larry Magid, Secretary