



MINUTES OF THE
NEW MEXICO EDUCATIONAL RETIREMENT BOARD
TELEPHONIC/VIRTUAL MEETING

October 15, 2021

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. via teleconference. A quorum was established following roll call.

Members Present:

Mr. H. Russell Goff, Chair

Ms. Mary Lou Cameron, Vice Chair

Mr. Larry Magid, Secretary

The Hon Tim Eichenberg, New Mexico State Treasurer

Dr. Donald W. Duszynski

Dr. Matías Fontenla

Mr. Mario Suazo

Dr. Kurt Steinhaus, Secretary of Public Education [sworn in; left at 9:25 a.m.];

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Members Excused:

None.

Staff Present:

Mr. Rick Scroggins, Interim Executive Director

Mr. Lawrence Esquibel, Deputy Director

Mr. Bob Jacksha, Chief Investment Officer

Mr. Prakash Bhakta, Chief Information Officer

Ms. Sara Brownstein, CFO

Ms. Kay Chippeaux, Deputy CIO, Public Securities & Credit

Mr. Aaron Armstrong, Alternatives Portfolio Manager

Ms. Francine Jacquez, Portfolio Manager, Public Securities & Credit

Ms. Mariana LaRoche, Communications & Outreach Director

Ms. Karla Leyba, Member Services Bureau Chief

Ms. Monica Lujan, Member Services Director

Ms. Susanne Roubidoux, General Counsel
Mr. Nathan Sax, Fixed Income Portfolio Manager

Others Present:

Mr. Allan Martin, Investment Advisor, NEPC
Ms. Judith Beatty, Board Recorder
Mr. Scott Wright, Public Education Department

b. Approval of Agenda

Item 4 was removed from agenda.

Ms. Cameron moved for approval of the agenda, as amended. Dr. Duszynski seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla, Mr. Suazo and Secretary Steinhaus voting in favor.

c. Approval of Minutes: August 20, 2021

Ms. Cameron moved approval of the Minutes of the August 20 meeting, as submitted. Dr. Duszynski seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla, Mr. Suazo and Secretary Steinhaus voting in favor.

d. Introduction of Guests

Mr. Scroggins introduced and welcomed Prakash Bhakta, new Chief Information Officer for the IT group.

Mr. Scroggins stated that Scott Wright, Director Operations for the Public Education Department, would be present.

2. SWEARING IN OF NEW BOARD MEMBERS

Secretary of Education Kurt Steinhaus was sworn in.

3. CONSENT AGENDA:

a) Board Travel

None.

4. [Deferred]

5. NMERB COMMITTEE APPOINTMENTS

a) Alternative Retirement Plan (ARP) Committee

Chairman Goff requested the following appointments to the Alternative Retirement Plan Committee: Larry Magid, Chair; Mario Suazo; Don Duszynski.

Ms. Cameron moved for approval. Secretary Steinhaus seconded the motion which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla, Mr. Suazo and Secretary Steinhaus voting in favor.

b) Audit Committee

Chairman Goff requested the following appointments to the Audit Committee: Mary Lou Cameron, Chair; Tim Eichenberg; Russell Goff.

Mr. Magid moved for approval. Dr. Fontenla seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla, Mr. Suazo and Secretary Steinhaus voting in favor.

c) Evaluation Committee

Chairman Goff requested the following appointments to the Evaluation Committee: Russell Goff, Chair; Mary Lou Cameron; Larry Magid.

Mr. Suazo moved for approval. Dr. Duszynski seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla, Mr. Suazo and Secretary Steinhaus voting in favor.

d) Investment Committee

Chairman Goff requested the following appointments to the Investment Committee: Larry Magid, Chair; Russell Goff; Matías Fontenla.

Ms. Cameron moved for approval. Dr. Duszynski seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla, Mr. Suazo and Secretary Steinhaus voting in favor.

6. LEGISLATIVE PROPOSAL FOR 2022 SESSION

Chairman Goff stated that, in recent days and weeks, several legislators have commented in legislative interim committees as well as in the newspapers that some of the new monies this year should go to shore up pension funds. Last week, he met with Sen. Mimi Stewart to ask her if she planned to introduce legislation that would provide additional contributions or monies to NMERB. She informed him that she wasn't yet sure because Senate Bill 42 in the 2021 Legislative session provided for two years of contribution increases. She said she planned to meet with key legislators and staff this week to address the issue. Today, Sen. Stewart will meet with the Governor and will discuss the legislation with her. He said he asked Sen. Stewart if anyone in the House is likely to introduce any legislation, and her response was that she didn't know.

Chairman Goff suggested that the board consider two possible avenues: 1) Wait until the next IPOC meeting on October 19 and the LFC meeting on October 29 and take action at the December BOT meeting; or consider adopting a resolution stating that the NMERB Board of Trustees supports an increase in employer contributions to address the solvency issue.

Chairman Goff asked for comments.

Ms. Cameron suggested making a statement so that legislators and others are aware that the Board of Trustees is still asking for that money.

Dr. Duszynski commented that the board is very lucky that UNM Retirement Association Board of Directors is very active in following the political process. He met with UNMRA investment committee yesterday, and they have an interest in helping the NMERB determine the direction in which to go to get new legislation to support the fund. They want to help in any way that they can. He said he feels it behooves the board to come up with ideas on ways in which the UNM Retirement Association board members might approach their friends, many of whom are in the legislature. He added that a member of UNMRA investment committee is a friend of the Governor. He said the board would like direction from the NMERB Board of Trustees. One thing they thought might be useful to pursue is trying to get one more year of 1 percent out of this year's legislature, which would be a long-term commitment versus getting a one-time cash infusion of \$10 million.

Mr. Magid suggested that the board adopt a resolution. Ms. Cameron agreed with Mr. Magid's suggestion. Even though the board doesn't have a specific bill in mind, it's important to keep the issue in the forefront.

Chairman Goff proposed that the board adopt a resolution that the NMERB Board of Trustees supports an increase in employer contributions to address the NMERB's solvency issue.

Ms. Cameron so moved. Mr. Magid seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla, Mr. Suazo and Secretary Steinhaus voting in favor.

**7. UPDATE ON STATE SECURITIES LITIGATION PRACTICE: CHOLLA KHOURY,
CONSUMER AND ENVIRONMENTAL PROTECTION DIVISION DIRECTOR,
NEW MEXICO ATTORNEY GENERAL'S OFFICE**

Ms. Khoury described the role of the Consumer and Environmental Protection Division in securities litigation. She said they do plaintiff's work on behalf of the state. As part of that, they monitor and engage in securities litigation in cases of securities fraud. When there is fraud on the market, investment prices plummet and funds like the NMERB lose money, and private litigation seeks to recoup that loss. The NMERB board is familiar with this because it participates as passive class members in these litigations.

Ms. Khoury said that, in the program they have created, they control how the litigation proceeds and control all aspects of the litigation. This includes deciding on whether or not to settle and whether the value of the settlement is reasonable; or if not, moving to trial. When a public fund like the NMERB moves for the plaintiff, there is a significant increase in the recovery of these cases as opposed to when a private individual is appointed lead plaintiff. Her division monitors these investments, with participation by the NMERB, to see when there is a fraud that also impacts the NMERB's investments; when they drop, they look at them in terms of whether or not the loss is significant, whether or not the conduct of the fraud is also significant, and then there is the "sweet spot" where corporate conduct is bad enough to interest the consumer protection side and the loss is great enough to justify moving for the plaintiff. When that happens, she notifies the NMERB and requests the data from the trading accounts, which Ms. Khoury said the program was created in 2016 when the Attorney General created the Consumer and Environmental Protection Division. In the five or six years since then they have had a total of eight cases across the State Investment Council (SIC), PERA and NMERB, so this is not a high frequency occurrence.

Ms. Khoury said New Mexico Administrative Code rule 2.82.1.17(d) delegates to the Executive Director the decision as to whether or not to move for lead plaintiff in securities cases. They work very closely with the Executive Director and General Counsel to determine whether this is in the public interest and in the board's fiduciary's wheelhouse.

Ms. Khoury said there are a few things to remember about what they do: 1) This is fraud, and when they bring it to the NMERB, it's not the board's fault, it's not

staff's fault, and not the investment manager's fault. It is illegal because no one knows it's happening. 2) This is low resource to the board, but on the division's end, they have done an open RFP that has gotten some of the top firms in the world to work with. They monitor, control, review every aspect of the litigation so the AG's Office really takes the lead on all of their litigation. This means they have topnotch resources to bring these actions. 3) This is low frequency. For the NMERB, there would be less than two or three that she would even be curious about in any given year, and not all of them would meet the threshold for recommending to move as lead plaintiff.

are analyzed to see whether or not the loss is significant and if the case is justifiable and bad enough to recommend moving for the plaintiff.

8. INVESTMENT REPORTS: BOB JACKSHA

a) Staff Selection Committee Report

Mr. Jacksha reviewed the three actions taken by the Staff Selection Committee at its September 16 meeting:

- Stonepeak Asia Infrastructure Fund: \$50 million investment. This is the NMERB's sixth investment with the group, the first being in 2012. The NMERB has also participated in co-investments with them. They have been a good partner and have performed well. The fund will invest in the Asia Pacific region in three sectors: communications, transportation logistics, and energy. They disclosed no placement agents or political contributions.
- TPG Thematic Advantage Core-Plus Real Estate: \$125 million investment. The fund will invest in the U.S. in various property types. The NMERB invested in another real estate fund with TPG in 2018 and has invested in several of their private equity funds. They disclosed no placement agents or political contributions.
- PanAgora, which is in the risk parity space. This is one of the types of contracts that do not have a fixed maturity date; so, every four years, the NMERB has to come back and authorize it for continuation, which was approved by the committee. The NMERB's exposure to PanAgora is just over \$300 million. They disclosed no placement agents or political contributions.

b) Cash Overlay Implementation

Portfolio Manager Francine Jacquez made a slide presentation [pp. 22-35].

Mr. Jacksha commented that the premise for this is that one would expect other markets to provide a better return than cash over time. Right now, cash or a

money market fund pays either nothing or next to nothing, so this is a strategic rather than a tactical move and a long-term outlook. He added that other things staff is exploring would be in the tactical vein, although generally the NMERB doesn't take tactical positions or try to predict the market. Occasionally, he said there are situations where one might want to increase or decrease exposure to certain markets. The NMERB may never do that using this program, although it has the ability to do that.

Mr. Jacksha noted that this could also be a source of liquidity. The NMERB could sell its S&P 500 stocks and get that exposure through futures, which would involve putting up a small amount of cash and using the rest of the cash for something else.

Mr. Jacksha stated that rebalancing could be done through a futures contract much more efficiently and quickly than trading individual stocks and bonds, which takes time.

Mr. Jacksha said the NMERB could also manage its interest rate exposure. It has a core bonds portfolio that's exposed to interest rates rising, and it could hedge that or various parts of the portfolio.

Mr. Jacksha said there are other trades the NMERB could do. It can't do that yet, but staff has examined some strategies using swaps. There is an opportunity where the NMERB could, for instance, go short a large cap index. It would have to pay to do that as part of a swap contract, and as a hedge, go long a small cap index and get paid more. The net of the transaction is the NMERB could earn 5 percent on the investment, although that isn't guaranteed.

Mr. Jacksha commented that there are a lot of things the NMERB could look at, but right now it's doing the cash overlay and will see what comes up in the future.

Mr. Martin commented that leverage may sound challenging, but the NMERB is in a very low interest rate environment where the expected return on cash is something like 2 percent, and equities in that environment aren't expected to do as well as they have, with an expected return of maybe 5 percent. The NMERB has the challenge of earning at least 7 percent to amortize its liabilities. He said one thing is to go into private markets, as it has, but there are limited values to that. For a portfolio that historically has earned at least 7 percent, the portfolio can be leveraged to produce higher results. He said Ms. Jacquez has pointed out that sometimes that doesn't work, but from an expected standpoint, this is one of the few opportunities there are to earn the kind of returns necessary. He commented that the NMERB is in very good company with a number of other plans that are pursuing this strategy.

Ms. Chippeaux and Mr. Jacksha thanked Ms. Jacquez for doing the heavy lifting all year, getting the meetings together with Parametric, and really birddogging them. She has been integral to the process.

Chairman Goff noted that Mr. Jacksha chaired a panel last week with the National Council of Teacher Retirement on real estate infrastructure as an asset class. He and his panel did an outstanding job.

Other Investment Reports

Portfolio manager Aaron Armstrong presented his annual report detailing NMERB investments in New Mexico as of March 31, 2021. A total of \$120,501,935 was invested in New Mexico companies and projects in oil field services, oil and gas pipelines, oil and gas production, electric transmission lines, telecommunications, solar energy equipment, banking, and real estate. In aggregate, NMERB's external investment managers have invested \$6.1 billion in New Mexico businesses and projects, the majority in energy related sectors and all in private companies.

9. DISABILITY RETIREMENTS: KARLA LEYBA, MEMBER SERVICES BUREAU CHIEF

[Because of audio problems, report was deferred to later in meeting following Executive Session.]

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

Ms. Lujan reported on the August-September period. During the bimonthly period, there were three disability applications (under age 60) processed, 28 reciprocity applications, and 237 regular retirement applications, for a grand total of 268. This is a typical retirement pattern.

Mr. Scroggins called the board's attention to a gross benefit amount of \$28,000 per month for a UNM retiree. Because of IRS rules, the pension system is restricted from paying pensions in excess of \$230,000 this year, and several years ago, the board approved a "qualified excess benefit arrangement." About a half dozen times annually, a member's benefit exceeds that amount. In that case, it is paid out of a completely separate account. The NMERB's actuaries, Gabriel Roeder Smith, do the calculations.

Ms. Cameron moved for approval of this report, as presented. Dr. Duszynski seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla and Mr. Suazo voting in favor.

11. UPDATE ON BUILDING: LAWRENCE ESQUIBEL, DEPUTY DIRECTOR

Mr. Esquibel reported that, on September 28, a 2-hour kickoff meeting was held with Dekker Parrish Sabatini, when the team began mapping out the vision on what the building would look like. Following the meeting, staff was given documentation containing position space needs for all who would occupy the building along with considerations for any projected growth over the next two to five years. These documents are currently being reviewed. A meeting with DPS is scheduled for next week.

Mr. Esquibel stated that, this week, he and Mr. Scroggins presented the agency Infrastructure Capital Improvement Plan for the third phase of the project for FY23 to the State Agency Capital Outlay Committee. The request includes an additional \$5 million for the project, which represents an increase over the original amount that was based on the expectations of construction costs (primarily materials), which are currently projected to be \$500 per square foot. For FY21, the NMERB received \$1,309,000 for purchase of the land and the associated studies to be conducted, which were for the property acquisition, rights of way easements, archaeological and environmental studies, planning, and initial design. The FY22 approved appropriation is \$5 million for the initial construction costs. As stated earlier, the submission for FY23 is for an additional \$5 million for construction, equipment, and furnishings, which represents an increase of \$2,634,000 on the original phase 3 construction estimate of \$1,791,000, \$75,000 over the estimate of furnishing and equipment for \$500,000. He said these figures are due to the dramatic increase in prices for construction materials and related costs.

Mr. Esquibel stated that, between now and the next board meeting, expectations are for program verification, which will be completed by the end of October. This will consist of meetings with each department to review space needs submitted by the departments, updating the building program, and updating of site constraints and building code requirements. Next, schematic design will take place through biweekly meetings through November 24, which entail developing blocking plans, or determining where each department should be located, developing space plans of actual department layouts, developing site layout of the building footprint, parking, building access, developing building mass studies for entrance, glazing locations, etc. Between November 29 and December 3, NMERB will review and provide back to DPS any revisions required. The design development, the final phase for this quarter, will be the first half of this phase, which will proceed through December 24. It will comprise additional development of the design, material selections for the exterior and interior materials, building system selections, and landscaping designs.

12. DIRECTOR'S REPORT: RICK SCROGGINS, INTERIM EXECUTIVE DIRECTOR

a) Retiree Healthcare Update

Mr. Scroggins reported that NMRHCA is currently going through the switch enrollment process.

Mr. Scroggins also noted that the NMRHCA SIC-managed investment fund has reached an all-time high of about \$1.2 billion, which is a significant achievement.

b) Agency Activities

Mr. Scroggins reviewed highlights from the activity report (pp. 59-62). The NMERB continues to be extremely busy.

- The NMERB has completed the recruitment process for Chief Information Officer with the hiring of Prakash Bhakta.
- On November 1, the NMERB will adopt a modified in-office setting, with different levels of staff in the office while others work remotely. Members will also be able to schedule in-person or remote meetings. For in-house staff presence and for meetings with members, the NMERB will continue to observe the necessary protocols about wearing a facemask and distancing.
- The NMERB continues to be successful in implementation of DocuSign, which enables members to execute documents electronically. In two months, the agency has processed 1,258 documents and 1,821 documents for the first quarter of the fiscal year.
- Some internal audits are wrapping up and others are in mid-stage. The financial audit should be ready on time.
- The annual actuarial report is processing on schedule. GRS actuary Ryan Falls has indicated that the NMERB can expect the Unfunded Actuarial Accrued Liability to decrease and the funded ratio to increase. In addition, the NMERB has \$1.7 billion in deferred asset gains that will help mitigate the impact of any market volatility that might occur over the next few years. Mr. Falls also thinks it is reasonable to expect the funding period to decrease from infinite to less than 50 years.

c) Other

None.

13. EXECUTIVE SESSION: 10:25 a.m.

- a) Deliberations regarding the Hearing Officer's Recommended Decision in the Administrative Appeal of Kendall Crookston, M.D., Ph.D. (session closed per NMSA 1978, § 10-15-1(H)(3). Lori Chavez, Assistant Attorney General.
- b) Pending litigation in which the board is a participant (session closed per § 10-15-1 (H)(7). Update regarding:
 - i. NMERB v. Debbie Romero and DFA, Case No. D-101-CV-2021-0035 Mark T. Baker (Peifer, Hanson, Mullins & Baker, P.A.), legal counsel to the board;

to the
and

- ii. Jan H. C. Goodwin v. Governor Lujan Grisham et al, Case No. 1:21-cv-00483 (U.S. District Court, New Mexico) Luke A. Salganek (Miller Stratvert P.A.); legal counsel to the board.

- c) Limited personnel matters (session closed per § 10-15-1(H)(2). Update regarding Executive Director search and pay.

Dr. Duszynski moved to go into executive session for the following purposes:

- a) Deliberations regarding the Hearing Officer's Recommended Decision in the Administrative Appeal of Kendall Crookston per Section 10-15-1(H)(3) of the Open Meetings Act;
- b) Discussion of pending litigation in which NMERB is a participant per Section 10-15-1(H)(7) of the OMA, specifically:
 - i. NMERB v. Debbie Romero/DFA, Case No. D-101-CV-2021-00353; and
 - ii. Jan Goodwin v. Governor Lujan Grisham et al., Case No. 1:21-cv-00483; and
- c) Discussion of limited personnel matters under Section 10-15-1(H)(2), specifically an update regarding the Executive Director search and pay.

Mr. Suazo seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla and Mr. Suazo voting in favor.

[The board came out of executive session at 12:17 p.m.]

Chairman Goff moved that the board come out of executive session. The only matters discussed during executive session were:

- **Deliberations on the Hearing Officer’s Recommended Decision in the administrative appeal of Kendall Crookston.**
- **Two pending court cases in which NMERB is a participant, specifically, NMERB v. Debbie Romero/DFA; and Jan Goodwin v. Governor Lujan Grisham et al., and**
- **An update regarding Executive Director search and pay.**

Ms. Cameron seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla and Mr. Suazo voting in favor.

9. DISABILITY RETIREMENTS: KARLA LEYBA, MEMBER SERVICES BUREAU CHIEF

Ms. Leyba presented the August-September status report of disability claims. She reported that there were 17 pending receipt of final information, 91 closed cases, and 17 pending periodic review, for a total of 123.

Ms. Leyba stated that Ms. Cameron had asked at the last meeting about the number of disability applications filed in 2020 versus 2021. Ms. Leyba said there were 30 disability applications filed during calendar year 2020. This year, between January and September, there were 11.

Mr. Suazo moved for approval of the report, as presented. Mr. Eichenberg seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla and Mr. Suazo voting in favor.

14. ACTION FROM EXECUTIVE SESSION

Chairman Goff moved to ratify the Hearing Officer’s Recommended Decision in NMERB Case No. 21-01 that concludes that Dr. Crookston failed to meet his burden to present a preponderance of evidence or legal argument that demonstrates that he is entitled to 21.75 years of service credit and that the NMERB decision to deny his request to adjust his monthly retirement benefit is upheld. Ms. Cameron seconded the motion, which passed unanimously by roll call vote, with Mr. Goff, Ms. Cameron, Mr. Magid, Mr. Eichenberg, Dr. Duszynski, Dr. Fontenla and Mr. Suazo voting in favor.

Other

Ms. Cameron moved to recommend the appointment of Susanne Roubidoux as Acting Executive Director beginning on January 1. Dr. Duszynski seconded the motion.

Ms. Roubidoux noted that the executive session was an update regarding limited personnel matters and an update regarding the Executive Director search and pay. Because appointing an interim Executive Director is not on the agenda for this meeting, the board would therefore not be able to vote on that pursuant to the Open Meetings Act.

Ms. Cameron thanked Ms. Roubidoux for this correction. Chairman Goff said it would be placed on the agenda for the December meeting.

Mr. Eichenberg requested that Chairman Goff give some guidance to Mr. Scroggins, who plans to retire at the end of December, in terms of what he feels is in his best interest. For instance, over the next couple of months, perhaps Mr. Scroggins could start double-filling his position and giving experience to somebody who could actually take over for him when he leaves.

Responding to a suggestion from Ms. Cameron, which was agreed to by board members, Chairman Goff said he would be glad to meet with Mr. Scroggins to discuss how to move forward.

15. NEXT MEETING: FRIDAY, DECEMBER 10, 2021 – ALBUQUERQUE OR VIRTUAL MEETING

16. ADJOURN: 12:35 p.m.

RECEIVED

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NMERB



Russell Goff, Chairman

ATTEST:



Larry Magid, Secretary