



## MINUTES OF THE NEW MEXICO EDUCATIONAL RETIREMENT BOARD OF TRUSTEES MEETING

**Albuquerque Public Schools Headquarters  
6400 Uptown Blvd, N.E., Albuquerque, NM**

**April 22, 2022**

### **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 Albuquerque Public Schools Headquarters, 6400 Uptown Boulevard, N.E., Albuquerque, New Mexico. A quorum was established following roll call.

#### **Members Present:**

Mr. H. Russell Goff, Chair  
Ms. Mary Lou Cameron, Vice Chair [by telephone]  
Mr. Larry Magid, Secretary  
The Honorable Tim Eichenberg, New Mexico State Treasurer  
Dr. Donald W. Duszynski  
Dr. Matías Fontenla  
Mr. Antonio Ortiz [sworn in during meeting]

#### **Members Excused:**

Mr. Mario Suazo

#### **Staff Present:**

Mr. David Archuleta, Executive Director  
Mr. Rick Scroggins, Assistant Director  
Mr. Lawrence Esquibel, Deputy Director  
Mr. Steve Neel, Deputy Chief Investment Officer, Alternative Assets  
Ms. Kay Chippeaux, Deputy CIO for Public Markets and Credit  
Mr. Prakash Bhakta, Chief Information Officer  
Ms. Sara Brownstein, CFO  
Ms. Monica Lujan, Member Services Director  
Ms. Karla Leyba, Member Services Bureau Chief  
Ms. Susanne Roubidoux, General Counsel  
Ms. Melinda Salazar, Human Resource Manager

Ms. Chantelle Chasteen, IT Intern  
Ms. Renee Cruz, IT Intern  
Mr. Julian Barraza, IT Network Admin Supervisor  
Mr. Davis Lee, Chief Information Security Officer

**Others Present:**

Mr. Allan Martin, Investment Advisor, NEPC [by telephone]  
Ms. Judith Beatty, Board Recorder

**b. Swearing in of Public Education Department Designee Antonio Ortiz**

Mr. Ortiz was duly sworn.

**c. Approval of Agenda**

**Mr. Magid moved approval of the agenda, as published. Dr. Duszynski seconded the motion, which passed unanimously. [Not present: Ms. Cameron]**

**d. Approval of Minutes: February 18, 2022**

**Dr. Duszynski moved approval of the minutes of the February 18, 2022, meeting. Dr. Fontenla seconded the motion, which passed, with Mr. Eichenberg in abstention. [Not present: Ms. Cameron]**

**e. Introduction of Guests**

Guests introduced themselves.

**2. CONSENT AGENDA: BOARD TRAVEL [NO DISCUSSION]**

**3. ADOPTION OF BOARD RESOLUTION: APPRECIATION FOR NMERB SPONSORED LEGISLATION: DAVID ARCHULETA, EXECUTIVE DIRECTOR**

Mr. Archuleta presented a resolution thanking Senator Stewart and Representative Figueroa for sponsoring Senate Bill 36 and for their unwavering commitment to New Mexico's educational employees and retirees. The bill, which passed in the last legislative session, gave the NMERB an additional 2 percent, which is expected to have a significant impact on the program's funded ratio, improving the sustainability of the NMERB fund.

**Dr. Duszynski moved for approval of the resolution. Dr. Fontenla seconded the motion, which passed unanimously.**

**4. PUBLIC RULE HEARING: AMENDMENTS TO 2.82.1 NMAC  
GENERAL PROVISIONS: RICK SCROGGINS, ASSISTANT  
DIRECTOR AND PRESIDING HEARING OFFICER**

- a. 2.82.1.8 Board Members and Officers**
- b. 2.82.2.9 Meetings**
- c. 2.82.1.10 Sanctions and Enforcement**
- d. 2.82.1.14 Investment Committee**

Mr. Scroggins stated that he has been designated as the presiding hearing officer for today's public rule hearing on proposed amendments to 2.82.1 NMAC. He stated that the purpose of today's hearing is for the board to receive comments from the public on the proposed amendments to 2.82.1 NMAC General Provisions, Sections 8, 9, 10, and 14. He stated that everyone is welcome to this hearing, and anyone wishing to speak today is asked to sign the sign-in sheet at the back of the room. He stated that a court reporter is present and transcribing the rule hearing, and that a written transcript of the hearing will be posted on the NMERB website and the Sunshine Portal.

The following board members were present for roll call at this time: Chairman Goff; Vice Chair Cameron; Secretary Magid; Mr. Eichenberg; Dr. Duszynski; Dr. Fontenla; and Mr. Ortiz.

Mr. Scroggins discussed procedural rules in detail, including when the public would have an opportunity to make comments during today's rule hearing, either orally or in writing.

General Counsel Susanne Roubidoux stated that copies of the proposed amendments and exhibits were available in the back of the room and had also been posted on the NMERB website and Sunshine Portal.

Ms. Roubidoux noted that the proposed rule amendments bring Rule 1 into conformity with statutory changes because of Senate Bill 303, enacted in the 2021 legislature. Senate Bill 303 increased the membership of the Board of Trustees from 7 members to 9 members. NMERB's Rule 1 contains several references to a seven-member board and should be updated to a nine-member board. There is also a minor change to the Investment Committee rule, which is unrelated to Senate Bill 303.

Ms. Roubidoux presented the following exhibits, which were admitted and entered into the record without objection.

Exhibit 1: Notice of Proposed Rulemaking published in Volume 33, Issue 6 of the New Mexico Register on March 22, 2022.

Exhibit 2: Proposed amendments to 2.82.1. NMAC, Sections 8, 9, 10 and 14, as posted on the Sunshine portal and the ERB website on March 22, 2022 to the present.

Exhibit 3: Sunshine Portal posting 3.22.22 to present.

Exhibit 4: NMERB website posting 3.22.22 to present.

Exhibit 5: Notification to Legislative Council Service

Exhibit 6: Notification to Legislative Education Study Committee

Exhibit 7: Notification to local administrative units.

Ms. Roubidoux stated that the NMERB had not received any written comments from the public on the proposed rule amendments by the deadline, which was April 21, 2022, at 3:00 p.m.

There were no questions or comments from members of the board or anyone in attendance. No one stated that they wished to submit any written comments.

The public comment portion of the rule hearing was closed.

There were no comments or questions from board members.

**Mr. Magid moved the amendment of 2.82.1 NMAC, Sections 8, 9, 10 and 14, as presented. Dr. Duszynski seconded the motion, which passed unanimously.**

Mr. Scroggins stated that the rule amendments adopted today by the board would be filed with the New Mexico State Records Center and Archives in accordance with the State Rules Act and the New Mexico Register publication deadlines. Unless provided by law, the rule amendments adopted today will become effective on the date they are published in the New Mexico Register.

Hearing concluded at 9:25 a.m.

## **5. FY23 OPERATING BUDGET: SARA BROWNSTEIN, CHIEF FINANCIAL OFFICER**

Ms. Brownstein presented a summary of the FY23 current operating budget, which totals about \$28.3 million. In September, NMERB requested an increase of \$32.6 million to the operating budget, effective July 1, 2023. The primary increase was in the other contractual services category for

investment fees. The budget approved by the legislature was \$30.6 million, including approximately \$612,100 in pay increases authorized in Section 8 of the General Appropriation Act, bringing total salaries for the agency to \$8.8 million.

Ms. Brownstein said the NMERB also retained its budget adjustment authority, allowing it to increase the budget for investment-related fees, physical plant failures, or emergencies that would impact the health and safety of the workforce.

[Agenda was reprioritized to hear Item 7 next.]

**7. PRESENTATION OF DRAFT SOLVENCY REPORT: RYAN FALLS, SENIOR CONSULTANT & ACTUARY; DANA WOOLFREY, SENIOR CONSULTANT & ACTUARY**

Mr. Falls and Ms. Woolfrey presented slides.

Mr. Falls said the board's adopted goal is to eliminate unfunded liability at some point in the future. Right now, employers are phasing in 18.15 percent of pay, and members are paying 10.7 percent, and half of that nearly 30 percent is being used to pay off the unfunded liability. Once unfunded liability is eliminated, contributions only need to pay for current year benefit accruals, or about half of current contributions. Based on current assumptions, the unfunded liability will be paid off in 2054.

Mr. Falls said the funded ratio is about 63 percent, which is less than ideal. Ms. Woolfrey added that a longer funding period is more volatile and it is much easier for one year to send the upward trajectory in a downward direction.

Ms. Woolfrey reviewed a series of options designed to improve pension plan solvency.

Mr. Archuleta said this report, scheduled for adoption at the June meeting, will also be made available to the Legislative Council Service, Legislative Finance Committee and the Legislative Education Study Committee prior to the June 30 deadline.

**6. PRESENTATION OF BUSINESS PROCESS IMPROVEMENT PROJECT: LINEA SOLUTIONS, INC., ERIC GRIFFIN, SENIOR CONSULTANT**

Mr. Griffin, who was attending by telephone, presented slides on the project background, objectives, execution, and outcomes [pages 32-40 in the board book].

Responding to a question from Dr. Duszynski on what kind of response Mr. Griffin expects to the RFP, Mr. Griffin said there are seven or eight key players in this industry, and it is expected that NMERB will receive four or five responses from those key players. The RFP will be posted on April 29 with a June 3 deadline.

## **8. AUDIT COMMITTEE REPORT: MARY LOU CAMERON, COMMITTEE CHAIR**

Ms. Cameron reported that the Audit Committee met on April 24 with the auditors from REDW LLC, for their notes on the recent internal audits on Human Resources, Service Credit, and Investment Risk Management and Communication. She said the investment audit focused on determining if assets were categorized appropriately in accordance with portfolio holdings and the proper portfolio manager was responsible for oversight. The auditors also tested to determine if risk at the individual investment and portfolio level as a whole is discussed and documented to ensure NMERB is considering how various investments impact the pension fund. Auditors also tested to determine if NMERB is in compliance with Investment Policy Statement (IPS) requirements surrounding the use of derivatives. Lastly, the portfolio managers were checked to see if they discussed risk management relevant to the portfolio holdings they oversee. During the course of the audit, there were identified areas where no exceptions were identified and processes appeared to be functioning properly. Specific recommendations from the Human Resources audit were made to improve the work in areas such as monitoring of leave, required training and documentation of approval of compensatory or overtime. She noted that the auditors complimented the HR manager in keeping a lot of things in place.

## **9. INVESTMENT REPORTS: STEVE NEEL, DEPUTY CIO FOR ALTERNATIVE ASSETS; KAY CHIPPEAUX, DEPUTY CIO FOR PUBLIC MARKETS AND CREDIT**

Mr. Neel reviewed actions taken by the Staff Selection Committee over the last three months. The SSC approved nine commitments totaling more than \$600 million.

- Approved a \$150 million commitment to OrbiMed Royalty & Credit Opportunities Fund IV for the Other Diversifying Assets portfolio. This is the third commitment the NMERB has made to this manager since 2018. OrbiMed focuses on royalties and structured credit in the healthcare space.
- Approved a \$60 million commitment to AE Industrial Fund III for the Private Equity portfolio. The NMERB's relationship with AE dates

back to 2015. AE is focused on aviation, energy, and the government contracting space.

- The SSC had a comprehensive private equity review at the March meeting. This portfolio has been performing very well.
- Approved a \$150 million commitment to Banner Ridge DSCO Fund II for the Private Equity portfolio. Their niche market is in distressed, special situations, and credit. The NMERB's relationship with this manager dates back 11 years.
- Approved a \$40 million commitment to OrbiMed Private Investments Fund IX for the Private Equity portfolio. The firm is focused on life sciences, and this fund is their venture arm.
- Renewed its relationship with Manulife GLC Farms, a Separately Managed Account, for the Real Assets portfolio. This relationship dates back to 2012.
- Approved a \$60 million commitment to Sares Regis Multifamily Value Fund IV for the Real Estate portfolio, bringing the NMERB's total commitment to \$120 million. This relationship dates back to 2013. The firm focuses on multifamily properties in the Southwest.
- Approved a \$50 million commitment to RAM Realty for the Real Estate portfolio, bringing the NMERB's total commitment to \$125 million. The manager is geographically focused in Florida, Tennessee, and North Carolina. The relationship dates back to 2011.
- Approved an additional \$10 million to Real Term Logistics Fund IV, for the Real Estate portfolio, bringing the NMERB's total commitment to \$60 million. They are logistics specialists that focus on infill properties.
- Approved a commitment of 50 million euros to Real Term European Logistics Income Fund for the Real Estate portfolio. They look at mission critical high flow-through properties.

Ms. Chippeaux and Mr. Neel discussed NMERB's Russian investment assets. She said she would confine her remarks to the public securities and opportunistic credit area.

Ms. Chippeaux said NMERB's current exposure in the public arena is mostly in the form of commingled funds, where the NMERB invests along with other investors, and the assets are held indirectly by NMERB. The NMERB has one Separately Managed Account (SMA) where it has direct holdings under its custody. NMERB has discretion to restrict investments only in the SMA, and not in the commingled accounts, and it does not have the ability to tell them what to invest in. That is already baked into the investment guidelines and agreements. With the five emerging market debt and equity managers, the current value of Russian assets is less than \$1 million, which is less than 1/10 of 1 percent of the NMERB portfolio.

Ms. Chippeaux said that, within public securities, all of the NMERB's managers have said that the Russian markets are closed, and any of the other securities that are traded outside of the Russian markets are very, very illiquid. The manager of NMERB's debt investments has told NMERB that they believe the recovery value of the holdings in the account will be materially above current prices, especially when the hostilities end and peace is brokered. Also, the markets need to open. As the board knows, there have been many sanctions put on the Russian government and Russian affiliated parties, and all of the NMERB's managers are in compliance with the rapidly-evolving sanctions.

Ms. Chippeaux stated that NMERB also wants to acknowledge receipt of a letter from Governor Michelle Lujan Grisham regarding divestment of Russian assets from all of the investment portfolios in the state of New Mexico, and the response from the Executive Director and Chief Investment Officer is in the board book.

Mr. Neel stated that, on the private side, NMERB has exposure in an aviation asset that was impacted by events in Ukraine. The Diversifying Assets portfolio has Airbus A320 aircraft that were leased to the Russian carrier Aeroflot, and the Russian government has nationalized all leased aircraft from Western countries. Staff, in consultation with the investment manager, has looked into this situation very closely and believes NMERB will be fully compensated for the assets because 1) NMERB acquired the assets during the height of the pandemic at distressed pricing; and 2) NMERB is essentially over-insured, with four insurance policies on these assets, one of which is with a AA rated US-domiciled insurance carrier with a market capitalization of over \$90 billion.

Mr. Neel commented that staff is trying not to hinder NMERB's legal position going forward; or if recovery is required that would impact the recovery value. Recovery isn't necessarily where staff is looking at this, since the assets are actually carried at cost because of the two points he mentioned earlier.

Mr. Martin said this has been a topic of discussion in virtually every pension plan he has met with over the last month or so. The tragedy in Ukraine is almost unfathomable, and everybody wants to do something about it. As indicated by Ms. Chippeaux, divestments in this case are impractical. The sanctions that have already been adopted closed the Russian stock exchange and foreign currency exchanges; as a result, the effect is that securities, which are valued at close to nothing, cannot be sold. Instructing managers of commingled funds to sell simply results in the underlying securities being segregated into a non-liquid stub, where the holders would hold pro rata shares of the illiquid stub. A hedge fund might



buy the stub at zero, and then ultimately make a lot of money on it in a recovery, so someone can't get rid of it without a fire sale.

Mr. Martin commented that, despite this, some funds have adopted a motion to divest, but the funds he advises that have considered this have added the words "prudent and practicable," which virtually has the effect of protecting the funds from forced sales.

Mr. Martin said the state of California is considering legislation that would force 20 California counties and four charter cities with pension plans to divest of any company that has business operations in Russia. In response, the counties and charter cities have drafted a response stating that they have minimal exposure to investments with direct ties to Russia and Belarus, but the definition of active business operations is sufficiently broad to include any company that has a facility or any personnel in those countries. This would include companies like Boeing, Amazon, McDonald's and other global enterprises. The letter said that divesting from every company with active business operations could mean significantly changing the investment mandates given to external investment managers, which would override the plenary authority of the boards in making active investment management decisions.

Mr. Neel asked Mr. Martin to comment on divestment in a private markets portfolio, which is particularly cumbersome. Mr. Martin responded that it would be even more challenging because this is a contract on a company that is privately held. He said it would be impractical to unwind positions without a significant and negative impact on the pension plan that tries to do it. In addition, announcing this in advance would be an invitation to potential bidders to take the seller to the cleaners.

Chairman Goff said this isn't an action item today, but asked that it be added to the June agenda for action, if any.

Ms. Cameron asked Mr. Martin if she was correct in thinking this was a "losing proposition." Mr. Martin said that was correct, because it would hurt the fund and have no effect on the Russian economy or the Russian invasion.

Responding to Mr. Eichenberg, Mr. Neel said staff is always looking at geopolitical risks in terms of market acceptability, and the last time something that has happened of this magnitude was in 1979, with the Iranian Revolution.

Ms. Chippeaux added that staff began looking at the Ukraine issue in mid-December, when it was having calls with all of the public managers and opportunistic credit managers to get information on what they thought was going to happen. None of the opportunistic credit managers had any

exposure, so thought their investments would be minimally impacted by the troop buildup and possible invasion. The manager that was most optimistic that there would not be a war was actually a manager who immediately got out of their Russian exposure. Most of the other managers had very minimal or no Russian exposure. For the commingled funds, staff really tries to make sure they are staying within the investment guidelines and staff feels comfortable with how they are thinking about the investments. The Separately Managed Account is the only one where staff can really push them in terms of how and where to invest or divest. At the highest point in late December, there was less than 2/10th of one percent of Russian exposure in the total portfolio.

Ms. Cameron commented that NMERB's investment managers are aware of everyone's concerns in connection with these particular investments and know the right time to withdraw.

Chairman Goff said that, based on what he has heard today, NMERB has minimal exposure at this point, it is impractical to divest, and the board does not wish to take a position at this time.

Ms. Chippeaux announced that this is her last meeting, as she will be retiring from NMERB.

Mr. Eichenberg requested that the June agenda include a resolution expressing support for the people of Ukraine.

Responding to a suggestion from Mr. Ortiz, Mr. Archuleta said he would prepare a summary of the board's discussion and forward it to the Governor's Office.

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

Ms. Lujan reported on the February-March 2022 period. During the bimonthly period, there were two disability applications (under age 60) processed, 33 reciprocity applications, and 196 regular retirement applications, for a total of 231 members.

Ms. Lujan reported that, as of April 8, NMERB has received 463 July 1 retirement applications, which is 100+ fewer applications than last year, but is more than the previous two years.

Responding to Chairman Goff, Ms. Lujan said most of the calls being taken by staff are from members asking about the new Return to Work rule, how it works, and when they can apply.

Ms. Leyba said the question asked most frequently is about the 36-month term and what happens at the end of the 36 months. She said the member can either terminate employment or do a one-year layoff and then return.

Mr. Magid asked why people are choosing to retire and return to work. Ms. Lujan said she believed the main reason was the ability to receive their benefit and not only supplement their income with an additional paycheck but also choose how much or how little they want to work. Mr. Magid asked if people are being counseled that they will receive a larger benefit if they wait. Ms. Lujan responded that retirement specialists do meet with members and discuss their options.

Ms. Cameron said she is on the Deming School Board and they are hearing about the stress that teachers and employees have gone through during the pandemic. She added that the stress is the highest she has ever seen since her involvement in the schools.

Mr. Eichenberg recalled comments made by Rep. Figueroa about the advanced age of the teaching force in New Mexico and how it compares to the surrounding states. He asked what the average age in New Mexico is compared to the other states.

Ms. Lujan responded that the teaching force in New Mexico is in fact older, and she would research this further and report back.

Mr. Archuleta added that the average age of retirement at the NMERB is currently 62.3 or 62.4. At the Retiree Health Care Authority, the average age of people just coming into the system over the past couple of years has been around 60.

**Ms. Cameron moved approval of the Age & Service Retirements report, as presented. Mr. Magid seconded the motion, which passed unanimously.**

## **11. DISABILITY RETIREMENTS: KARLA LEYBA, BUREAU CHIEF, MEMBER SERVICES**

Ms. Leyba presented the February-March status report on disability claims. She reported 2 cases in preliminary review, 14 pending receipt of final information, 120 closed cases, and 1 pending expert review, for a total of 153.

**Ms. Cameron moved to approve the Disability Retirement Report, as presented. Dr. Duszynski seconded the motion, which passed unanimously.**

## **12. BUILDING UPDATE: LAWRENCE ESQUIBEL, DEPUTY DIRECTOR**

Mr. Esquibel reported that he, Mr. Archuleta, Mr. Scroggins, and Project Manager Calvin Steckler have been working with the architects at Dekker/Perich/Sabatini (DPS) on refining the building design, with much of that time focused on determining if there is sufficient funding for the project. Since the February report to the board, when estimated square foot cost was \$423 and increasing by 1.5 percent each month, the cost is now \$435 per square foot and increased the cost of the building by roughly \$500,000 in the two-month period. By October, the cost is expected to jump to \$477 per square foot, adding \$1.3 million to the cost for a total of \$12,000,000.

Mr. Esquibel said reducing the footprint of the building from 25,000 square feet to 20,000 square feet would reduce the cost by \$1.5 million, but that still would not be enough to complete the project. Current estimates are that they would need an additional \$3-\$5 million. The original plan was to go out to bid in June, award contracts in August or September, and break ground in October 2022, with a completion date in October 2023. He said that increased commercial project activity in New Mexico, combined with increased construction costs and supply chain issues, would impact the number of bids NMERB would receive. Construction contractors are stretched very thin right now, and those who do bid would likely build cost buffers into their bids by another 10-30 percent because of market volatility and decreased interest in this particular project. DPS states that NMERB does not have enough money to enter into a construction contract at this time.

Mr. Esquibel said the team is prepared to defer the timeline for advertising bids to the spring of 2023. In the interim, they would look into requesting sustainable energy funding from the state, if available, as this could reduce the overall cost of the building and decrease monthly expenses after construction.

Mr. Magid said he thought it would be counterproductive to reduce this space, because NMERB would end up in the same situation it is in now, where it is leasing space.

Mr. Archuleta stated that, in lowering the footprint to about 19,000 square feet, they shrank some office space, cut back on meeting space, and removed other areas that were not considered essential. For example, he questioned whether there is a need for a full-size office if an employee is on a hybrid schedule and is there only 20 hours a week. He commented that the revised building plan with just 19,000 square feet meets all of the programming requirements, and he thanked Mr. Steckler for helping the team get clarity on what NMERB's practical needs are before it moves forward.

Mr. Archuleta said DFA (Department of Finance and Administration) and LFC (Legislative Finance Committee) understand that NMERB does not have sufficient funding set aside at this point and will not oppose NMERB's future request to use additional funding of its own. The final figures should be available when staff brings this forward to the board in July.

Mr. Eichenberg recommended not scaling back so much and to keep in mind why the board wanted to do this in the first place. He said he knows this is a new trend, but 6,000-7,000 square feet is a significant amount of space to give up, and the cost to make that up later is going to cost three times as much.

### **13. DIRECTOR'S REPORT: DAVID ARCHULETA, EXECUTIVE DIRECTOR**

#### **a. Refund Rate for FY23**

Mr. Archuleta reported that the refund rate for the coming fiscal year will be 2.42 percent.

#### **b. NMRHCA update**

Mr. Archuleta stated that the position of Executive Director has been offered to Deputy Director Neil Kueffer.

Mr. Archuleta stated that NMERB Deputy Director Lawrence Esquibel is assisting the NMRHCA in its search for a new Chief Information Officer.

Mr. Archuleta reported that a memo was recently issued by the Superintendent of Insurance following a request from Ultra Health, a private company, in terms of requiring the NMRHCA to cover medical marijuana under the no-cost sharing arrangements imposed upon the NMRHCA as part of Senate Bill 317 by the 2020 legislature. The bill eliminated cost sharing for certain prescription drugs related to the treatment of behavioral health, and this would have had a significant financial impact on the RHCA. Fortunately, the Superintendent said they could not force the agency to cover that.

#### **c. Agency Activities**

Mr. Archuleta noted that the report from Member Services (page 103) shows that more than half of the phone calls received in that office were dropped. He does not expect that to continue, however, as certain processes have been implemented since then, including a reorganization of Member Services so that certain people are dedicated to taking calls and taking applications. There have been challenges with recruiting and retaining

personnel in the agency, and every effort is being made to make sure NMERB is serving its customers. This is a top priority.

Mr. Archuleta said the RFP is being prepared for the Pension Administration System. In many respects, the overall success of its implementation is critical to being able to pay retirees and account for the amounts going forward, and the board will see a request from staff that is sufficient to meet those needs.

#### **d. Legislative Update**

Mr. Archuleta cited a March 24 letter addressed to LFC Director David Abbey from the Council of University Presidents (CUP), New Mexico Independent Community Colleges (NMICC) and the New Mexico Association of Community Colleges (NMACC), which cited insufficient funding for Senate Bill 36. Basically, 2 percent of the 1 percent they were requesting was baked into HB 2, and the Higher Education Institutions statewide will be required to absorb the additional 1 percent, which is around \$11.5 million.

Mr. Archuleta said the interim committee schedules have yet to be announced, but NMERB has been advised to begin discussing any potential legislation. He recommended waiting until the next solvency reports are developed before approaching any legislators about any additional contribution increases.

Mr. Archuleta said that, based on the discussion yesterday with the consulting actuaries, in terms of the expiration of the qualified excess benefit arrangement for members who draw a very large pension, there are certain federal tax standards that imposed on what the members can actually receive in terms of their pension benefit. Anyone that started after July 1999 will not be made whole when they retire for amounts in excess of \$245,000 a year. He said he suspects any potential legislation will come from the higher education institutions rather than NMERB, as it is an employer requirement to notify people of the benefit.

Marc Saavedra, CUP Executive Director, said the LFC's position is that they overfunded Higher Education this year and that they used an "unrestricted compensation number" for Higher Education rather than the NMERB numbers provided for this year's increase. This is about \$300 million less than the NMERB number provided. Higher Education is short by roughly \$11.8 million as a result. He said the LFC is open to having further discussion on this. Mr. Saavedra asked for the board's support going forward.

#### **14. PROPOSED AMENDMENTS TO 2.82.5 NMAC: SUSANNE ROUBIDOUX, GENERAL COUNSEL**

Ms. Roubidoux said the proposed amendments stem from action taken in the 2022 legislature, which created a new Return to Work (RTW) pathway in House Bill 73A, as amended. Under this new pathway, an NMERB retiree may return to work for up to 36 consecutive or non-consecutive months if the retiree has completed a 90-day layout period after they retire. The retiree and employer must pay nonrefundable contributions, and the retiree cannot earn or purchase service credit for their period of reemployment. The new law goes into effect on May 18.

Ms. Roubidoux said the bill did not change any of the NMERB's existing RTW programs, so this is an additional new RTW program. Staff drafted a proposed rule to be located alongside the other RTW rules in 2.82.5 NMAC. The new rule will be "2.82.5.18 NMAC: Return to Work 36 Months." The proposed amendment describes the program requirements and penalties for noncompliance.

Ms. Roubidoux said there is also a small change in subsection 11 of 2.82.5. NMAC to make the language gender-neutral and to correct a cross referencing error. Ms. Roubidoux stated that the proposed amendments are presented to the Board for their initial review, and a formal public rule hearing would be conducted in the next several weeks.

**Mr. Magid moved approval of the proposed amendments to 2.82.5 NMAC as presented and directs the Executive Director to publish a Notice of Proposed Rulemaking in the New Mexico Register, publish the Notice and the proposed amendments on the Sunshine Portal and the NMERB website, and schedule a public rulemaking hearing at the next available opportunity. Dr. Duszynski seconded the motion, which passed unanimously.**

**15. EXECUTIVE SESSION: 12:02 p.m.**

- a) Threatened or pending litigation in which the Board is or may become a participant (session closed per § 10-15-1(H)(7):**
  - i) *NMERB v. Debbie Romero and DFA*, Case No. A-1-CA-40106 (appeal from D-101-CV-2021-00353), Mark T. Baker (Peifer, Hanson, Mullins & Baker, P.A.), legal counsel to the Board;**
  - ii) *Jan H. C. Goodwin v. Governor Lujan Grisham et al.*, Case No. Case No. 1:21-cv-00483-JHR-KK (U.S. District Court, New Mexico). Luke A. Salganek (Miller Stratvert P.A.), legal counsel to the Board;**
  - iii) *In re Credit Default Swap Antitrust Litig.*, Case No. 1:21-cv-00606. Brian E. McMath, Assistant Attorney**

- General, New Mexico Office of the Attorney  
General; and  
iv) EEOC #39B-2022-00060.

Chairman Goff moved that the board go into executive session for the following purposes:

a) Discussion of threatened or pending litigation in which NMERB is or may become a participant (session closed per § 10-15-1(H)(7) of the OMA), specifically:

- i) *NMERB v. Debbie Romero and DFA*, Case No. A-1-CA-40106;
- ii) *Jan H. C. Goodwin v. Governor Lujan Grisham et al.*, Case No. Case No. 1:21-cv-00483-JHR-KK;
- iii) *In re Credit Default Swap Antitrust Litigation.*, Case No. 1:21-cv-00606; and
- iv) EEOC #39B-2022-00060.

Mr. Magid seconded the motion, which passed unanimously by roll call vote:

For: Chairman Goff; Ms. Cameron; Mr. Magid; Mr. Eichenberg; Dr. Duszynski; Dr. Fontenla; Mr. Ortiz.

[The board came out of executive session at 12:50 p.m.]

## 16. ACTION FROM EXECUTIVE SESSION

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

- a) Threatened or pending litigation in which NMERB is or may become a participant, specifically (i) *NMERB v. Debbie Romero/ DFA*; (ii) *Jan Goodwin v. Governor Lujan Grisham et al*; (iii) *in re Credit Default Swap Antitrust Litigation*; and (iv) EEOC #39B-2022-00060.

Dr. Duszynski seconded the motion, which passed unanimously by roll call vote:

For: Chairman Goff; Ms. Cameron; Mr. Magid; Mr. Eichenberg; Dr. Duszynski; Dr. Fontenla; Mr. Ortiz.



- 17. **NEXT MEETING: FRIDAY, JUNE 24, 2022 – ALBUQUERQUE**
- 18. **ADJOURN: 12:50 p.m.**



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Russell Goff, Chairman

ATTEST:



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Larry Magid, Secretary