

MINUTES OF THE
NEW MEXICO EDUCATIONAL RETIREMENT BOARD OF TRUSTEES

REGULAR MEETING

June 24, 2022

1. a. ROLL CALL: QUORUM PRESENT

A Regular Meeting of the New Mexico Educational Retirement Board of Trustees 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 Hon Tim Eichenberg, New Mexico State Treasurer
Dr. Donald W. Duszynski
Dr. Matías Fontenla
Mr. Antonio Ortiz

Members Excused:

Mr. Mario Suazo

Staff Present:

Mr. David Archuleta, Executive Director
Mr. Rick Scroggins, Assistant Director
Mr. Lawrence Esquibel, Deputy Director
Ms. Monica Lujan, Member Services Director
Mr. Bob Jacksha, Chief Investment Officer
Mr. Mark Canavan, Investment Officer, Real Estate [by telephone]
Mr. G. Alan Myers, Investment Accounting & Operations Manager [by telephone]
Ms. Destiny Martinez, Executive Assistant
Ms. Jenna Vigil, Member Services Bureau Chief
Ms. Susanne Roubidoux, General Counsel

Others Present:

Mr. Allan Martin, Investment Advisor, NEPC [by telephone]
Ms. Dana Woolfrey, actuarial consultant, GRS [by telephone]
Mr. Joseph Garcia, LESC

Mr. Joseph Simon, LFC
Ms. Judith Beatty, Board Recorder

b. Approval of Agenda

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

c. Approval of Minutes: April 22, 2022

Dr. Duszynski moved approval of the minutes of the April 22, 2022, meeting. Mr. Eichenberg seconded the motion, which passed unanimously.

d. Introduction of Guests

Guests introduced themselves.

Chairman Goff announced that former NMERB Board of Trustees chair Steven Gluckstern passed away in Santa Fe on May 29 from aggressive brain cancer.

2. CONSENT AGENDA: BOARD TRAVEL

- Request from Antonio Ortiz to attend the International Foundation of Employee Benefit Plans New Trustees Institute Level 1 Core Concepts training on Saturday, October 22 through Monday, October 24 in Las Vegas.
- Request from Russell Goff and Mary Lou Cameron to attend the NCTR conference in Tucson in October.

Mr. Magid moved to approve these travel requests. Dr. Fontenla seconded the motion, which passed unanimously.

3. ADOPTION OF BOARD RESOLUTION: SUPPORT FOR THE PEOPLE OF UKRAINE

Chairman Goff read this resolution, resolving that “the Board hereby formally wishes to condemn the violent actions taken by Russia against Ukraine and support an immediate ceasefire.”

Mr. Magid moved for approval. Dr. Duszynski seconded the motion, which passed unanimously.

4. PUBLIC RULE HEARING: AMENDMENTS TO 2.82.5 NMAC RETIREMENT BENEFITS:

**RICK SCROGGINS, ASSISTANT DIRECTOR, INTERIM CHIEF FINANCIAL OFFICER, AND
PRESIDING HEARING OFFICER**

a.

Mr. Scroggins stated that he has been designated as the presiding hearing officer for today's public rule hearing on proposed amendments to 2.82.5 NMAC. The hearing began at 9:10 a.m. He stated that the purpose of today's hearing is for the board to receive comments from the public on the proposed amendments to 2.82.5 NMAC Retirement Benefits, Sections 11 and 18-22. 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 will collect any exhibits introduced during the hearing.

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 during the hearing the public would have an opportunity to enter comments into the record, either orally or in writing.

General Counsel Susanne Roubidoux stated that copies of all of the proposed amendments were available in the back of the room and had also been posted on the NMERB website and Sunshine Portal since May 24, 2022.

Ms. Roubidoux stated that the amendments describe a new Return to Work program, enacted by the 2022 legislature in HB 73. Under the new program, a retiree may return to work for a local administrative unit (LAU) for up to 36 consecutive or nonconsecutive months if the retiree has completed a 90-day layout period after retiring. The retiree and the LAU must pay non-refundable contributions. The retiree cannot earn or purchase service credit for the period of reemployment. The purpose of the proposed amendments is to add a rule describing the program, requirements, and penalties if a retiree is approved for the program but returns to employment for more than 36 consecutive or nonconsecutive months. The new rule would be 2.82.5.18 NMAC and the subsequent sections in 2.82.5 NMAC would be renumbered. There is also a minor change to 2.82.5.11 to make the language gender neutral and to correct an internal reference.

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 10 of the New Mexico Register on May 24, 2022.

Exhibit 2. Proposed amendments to 2.82.5 NMAC, Sections 11 and 18-22 as posted on the Sunshine portal and the ERB website on May 24, 2022 to the present.

Exhibit 3. Sunshine Portal posting on May 24, 2022, to present.

Exhibit 4. NMERB website posting May 24, 2022, to present.

Exhibit 5. Notification to Legislative Council Service

Exhibit 6. Notification to Legislative Education Study Committee

Exhibit 7. Notification to local administrative units.

Exhibit 8. Written comments received from members of the public.

There were no questions or comments from members of the public. No one stated that they wished to enter any written comments into the record.

The public comment portion of the rule hearing was closed.

Responding to Dr. Fontenla, Ms. Roubidoux said two written comments were received. A comment from Kris Quisenberry was referred to Member Services for information on what Return to Work programs she may be eligible for. The second written comment, which did not relate to the proposed amendments, was from Randy Martinez at Pojoaque High School.

Mr. Magid moved adoption of the amendments to 2.82.5 NMAC, Sections 11 and 18-22, as presented. Dr. Duszynski seconded the motion, which passed unanimously.

Mr. Scroggins reminded members of the public attending this rule hearing to sign the sign-in sheet at the back of the room, as the sheet will be marked as an exhibit.

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 deadline. Unless provided by law, the rule amendments adopted today will become effective on the date they are published in the New Mexico Register.

Hearing adjourned at 9:25 a.m. The court reporter was released.

5. ALTERNATIVE RETIREMENT PLAN COMMITTEE: LARRY MAGID, CHAIR

a. ARP Committee Report – June 8, 2022 Meeting

Mr. Magid reported that the ARP Committee met on June 8, with representatives from CAPTRUST, the committee's consultants in attendance. The committee took the following actions:

- Reviewed the TIAA contract structure and CREF annuity update;
- Discussed the defined contribution quarterly review for Q1 2022.
- Approved several changes to the CREF variable annuity accounts and approved moving certain annuity account assets from the R2 to the R3 or the R4 share classes, which will save participants about \$30,000 per year in fees.
- Approved changes to the mutual fund watchlist. Three funds were placed on watch: Oakmark International; Fidelity High Income; and DFA Emerging Markets I. Fidelity Small Cap Discovery was removed from the watchlist.
- Approved a one-year professional services contract with CAPTRUST for \$58,000, to begin July 1, to continue ARP advisory services. There was no change to the compensation and scope of work.
- Reviewed and recommended approval of proposed changes to the ARP Operations Manual regarding Return to Work and increases to the employer remittance to the NMERB fund. These changes are because of the statutory changes enacted by the 2022 legislature.
- Scheduled the next ARP meeting for December 8.

b. Amendments to ARP Operations Manual: Susanne Roubidoux, General Counsel

Ms. Roubidoux said that, when she reviewed the ARP Operations Manual, it became apparent that Section 1(H) of the manual hadn't been updated in a long time, as it referred only to the original Return to Work (RTW) program, and there have been two or three more legislature-enacted RTW programs since then. She said it seemed to make sense just to have a generic reference to the RTW statute (§22-11-25.1) and the NMERB RTW rule (2.82.5 NMAC). This will mean that the ARP Manual won't need to be amended every time the legislature revises the RTW statute.

Ms. Roubidoux said Section I.H of the Manual would now state:

- H. An ARP retiree who returns to work shall do so under the provisions of NMSA 1978, § 22-11-25.1 and 2.82.5 NMAC.

Ms. Roubidoux said the second change to the Manual concerns Senate Bill 36, which was passed in the 2022 legislature and signed by the Governor, and increased the employer remittance to the NMERB Fund to 6.25 percent beginning July 1, 2022, and 7.25 percent beginning July 1, 2023. In Section II.A, the Manual currently states the old percentages. Since there seems to be a trend of the legislature making changes to the employer remittance and employer contribution, it would make more sense for the Manual to cross reference the statute rather than amending the Manual each time the legislature changes the remittance rate.

Ms. Roubidoux said Section II.A would now state:

- A. ERB FUND ADMINISTRATION

The Institution will remit to the Educational Retirement Board the percentage of all ARP Participants' earnings specified in NMSA 1978, Section 22-11-49(B), on the same schedule and in the same manner that the contributions are made for members to ERB.

Mr. Magid moved for approval of the proposed amendments to the ARP Operations Manual, as presented. Dr. Duszynski seconded the motion, which passed unanimously.

6. PRESENTATION OF SOLVENCY REPORT: DAVID ARCHULETA, EXECUTIVE DIRECTOR

[On phone: GRS consultant Dana Woolfrey]

Chairman Goff stated that, per Senate Bill 42 passed in 2021, the NMERB is required to report to the Department of Finance and Administration, the Legislative Finance Committee, the Legislative Education Study Committee and any other appropriate interim legislative committees on fund status and options to improve pension plan solvency without additional contributions from public employers. The actuaries made a presentation to the Board of Trustees on that, and the final documents are before the board today.

Mr. Archuleta stated that Senate Bill 42 established a schedule to increase employer contributions from 14.15 percent to 16.15 percent, and Senate Bill 36 passed by the 2022 legislature established a schedule to increase employer contributions from 16.15 percent to 18.15 percent in 1 percent increments over a two-year period. This sets the NMERB on a trajectory of being fully funded in 33 years; however, an amendment in Senate Bill 36 required the NMERB to evaluate what it would take to get to a full funded status without any additional employer contributions to the program. The NMERB's actuaries, GRS, appeared before the NMERB at its April meeting with a report evaluating different options for reducing benefits either existing or future that would get to the fully funded scenario sooner rather than later.

Mr. Archuleta said this is listed as an action item today, but stressed that it does not constitute any endorsement or support for any of the concepts mentioned in the report. He added that he did not feel there would be any appetite among legislators to make adjustments or corrections to either the contributions coming into the program or any future benefit adjustments. Ultimately, the program needs to remain a benefit, and as benefits are reduced from the program, it ceases to become a benefit.

Mr. Eichenberg moved acceptance of the report. Mr. Magid seconded the motion, which passed unanimously.

7. INVESTMENT REPORTS: BOB JACKSHA, CIO

a. Custody Bank Contract

Alan Myers, NMERB Accounting & Operations Manager, stated that the NMERB's custody bank contract with State Street Bank & Trust expires on June 30, 2022. Staff is proposing that the contract be extended for an additional two years. While the NMERB's relationship with State Street has not been trouble-free, staff and State Street have been working together to resolve all ongoing issues. The NMERB has implemented a Key Performance Indicator process with State Street so that a failure to perform per the contract will result in a credit to the fees paid to State Street. Staff holds biweekly calls with State Street and is in touch daily, as needed, to ensure that all issues are resolved in a timely manner.

Mr. Magid moved that the Board of Trustees approve a two-year extension of the custody bank contract with State Street Bank & Trust Company, subject to and contingent upon New Mexico State Law and Educational Retirement Board policies. Dr. Fontenla seconded the motion, which passed unanimously.

b. Q1 Investment Report

[Presenter: Allan Martin]

Mr. Martin presented the Q1 report, with the following highlights:

- Over the past 5 years, the fund returned 10.0 percent per annum.
- Over the past 3 years, the fund returned 11.7 percent per annum.
- For the year ending March 31, 2022, the fund experienced a net investment gain of \$2.2 billion, which includes a net investment loss of \$145 million during the quarter. Assets increased from \$14.7 billion 12 months ago to \$16.4 billion on March 31, 2022, with \$530.4 million in net distributions during the year. The fund returned 14.8 percent, outperforming the policy index by 6.3 percent and ranking in the 1st percentile of its peers.

c. Staff Selection Committee Report

Mr. Canavan summarized the actions of the Staff Selection Committee at its May and June meetings:

- Lyric Capital Royalty Fund II: Approved a \$100 million investment for the Diversifying Assets portfolio. This fund is focused on the acquisition, administration, and disposition of music royalty portfolios.
- Nova Infrastructure Fund I: Approved a \$50 million investment for the Infrastructure portfolio. Nova invests in "physical assets that make modern civilization possible," such as roads, telecommunications, power plants, waste treatment facilities and other physical assets.

- Crow Holdings Realty Partners X: Approved a \$50 million investment for the Real Estate portfolio. Crow primarily focuses on multifamily apartments and industrial real estate in the Southwest and Southeast markets.
- BVP Forge Institutional Fund I: Approved up to \$50 million for the Private Equity portfolio. BVP focuses on control buyouts primarily in software in the lower middle markets. NMERB has invested in BVP since 2019.
- Raith NMERB Core Plus Real Estate SMA: Approved a commitment of \$100 million, which is the third tranche of capital into the account. The account will focus in both public and private debt, including commercial mortgage-backed securities, collateralized loans, subordinated debt, and preferred equity.
- Orchard Platform SMA: Approved a \$100 million commitment for the Diversifying Assets portfolio. This commitment is tranching and an additional \$100 million may be activated in 2023. The SMA will invest in four strategies, including two funds focused on opportunistic lending and strategic equity finance strategy.
- Approved an amendment to the NMERB's QED accounting platform contract to add a new pricing service.
- Approved the Sole Source Procurement of Foster Garvey and K&L Gates for legal investment services for NMERB. These firms have provided investment counsel legal services to the NMERB for decades. They have deep legal expertise, including in the specific type of securities transactions in which the NMERB invests.

d. Investment Committee Report

Mr. Jacksha reported on actions taken by the Investment Committee, which met this morning:

- Accepted the Q1 Proxy Voting Report.
- Reviewed the Q4 Infrastructure portfolio and the Q4 Real Estate and Real Assets portfolio. Both programs are doing well.
- Reviewed the Q1 Commission Report.
- Reviewed the Derivatives Report.

e. Other Investment Reports

None.

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

a. Regular Retirement

Ms. Lujan introduced Jenna Vigil, who has been with Member Services for seven years and would step into the role of Member Services Bureau Chief to replace Karla Leyba, who would be retiring August 1.

Ms. Lujan reported on the April-May 2022 period. During the bimonthly period, there were six disability applications (under age 60) processed, 33 reciprocity applications, and 570 regular retirement applications, for a total of 609 members who applied for retirement during this period.

b. Update on July Retirements

Ms. Lujan reported that, as of May 27, the NMERB has received 809 July 1 retirement applications, while last year the number was 319. As of this morning, there were 885 retirement applications, with only a week left.

Ms. Cameron moved to approve the Age & Service Retirements. Mr. Eichenberg seconded the motion, which passed unanimously.

Responding to Chairman Goff, Ms. Lujan said there were 14 applications for the RTW 90-day layout period under the new rule, as of yesterday. She said Member Services is receiving a lot of calls from employers as well as members with questions about the new rule.

Ms. Lujan said Mr. Eichenberg had asked at the last meeting about the average age of the teachers. According to the actuarial report, the average age is 46.

**9. DISABILITY RETIREMENTS: MONICA LUJAN, MEMBER SERVICES DIRECTOR;
JENNA VIGIL, BUREAU CHIEF, MEMBER SERVICES**

Ms. Lujan presented the April-May status report on disability claims. There were 13 cases pending receipt of final information, 132 closed cases, and 16 pending periodic review, for a total of 161.

Dr. Duszynski moved to approve the Disability Retirement Report, as presented. Mr. Magid seconded the motion, which passed unanimously.

**10. 2024-2028 INFRASTRUCTURE CAPITAL IMPROVEMENT PLAN:
LAWRENCE ESQUIBEL, DEPUTY DIRECTOR**

Mr. Esquibel said that, as previously reported, the team has paused the project in lieu of seeking additional funds to address rapidly raising construction costs. Each year, the NMERB is required to submit an updated Infrastructure Capital Improvement Plan (ICIP); and with the board's approval, the team would like to seek additional funding through the submission of the FY24-28 ICIP.

Mr. Esquibel stated that the agency has submitted ICIP plans for the NMERB's spacing needs since FY 2015. To address space limitations, the NMERB has rented space in Santa Fe for the Investments team for 10 years at a cost of \$7 million; in addition, it relocated the

Albuquerque offices to a larger space in another 10-year lease for \$1 million. In 2019, the NMERB acquired the Las Soleras Drive property, with estimated costs for the facility initially projected to be \$283 per square foot, for a total estimated cost of \$8.5 million, which included furniture and equipment.

Mr. Esquibel said the building size has been reduced from the original plan for 25,000 square feet to 19,290 square feet. The team felt the offices and cubicles were very spacious under the hybrid working model and felt comfortable reducing the size of all workspaces. Current construction costs are at \$425 per square foot, which are expected to increase to \$501 per square foot in 12 months. The projected shortfall at that time is projected at \$3.1 million.

Mr. Esquibel asked for board approval for the FY24-28 ICIP plan and to use an additional \$5 million (\$3.1 million shortfall + \$1.9 million in contingencies) in NMERB funds, for a total project cost of \$16.3 million.

Mr. Archuleta said the \$1.9 million was included so that the NMERB would not have to pause at this time next year to seek additional funding.

Mr. Magid recalled past discussion about making this an NMERB investment in its Real Estate portfolio. He asked if it would be too late to look at that.

Mr. Jacksha said the NMERB discussed this a couple of years ago and ultimately decided against it. One issue was that it would not receive approval from legislators. He said it is possible to go that route, however.

Mr. Archuleta expressed concern that the NMERB would not be able to reverse course at this point in the capital outlay process.

Mr. Magid moved for approval. Dr. Fontenla seconded the motion, which passed unanimously.

11. DIRECTOR'S REPORT: DAVID ARCHULETA, EXECUTIVE DIRECTOR

a. NMRHCA Update

Mr. Archuleta summarized the May-June NMRHCA report.

b. Agency Activities

Mr. Archuleta discussed highlights from the NMERB Departmental Activity Report for late April – mid June. HR highlights included the addition of ASD Director/Chief Financial Officer Patrick Sandoval and the promotion of Destiny Martinez to Executive Assistant. In addition, Mariana LaRoche has left the NMERB to go to work for ABC-TV in Milwaukee, and portfolio managers Casey Poe and Aaron Armstrong have resigned from the NMERB Investment office.

12. BOARD SELF-EVALUATION PROCESS: RUSSELL GOFF, CHAIRPERSON; DAVID ARCHULETA, EXECUTIVE DIRECTOR

Chairman Goff said the NMERB has undergone a number of changes over the past year, including a new Executive Director, a new Deputy Director, a new Budget Director, a new Assistant to the Executive Director, and a new tech director. In addition, there are three new board members, newly passed legislation (SB 36), a new Return to Work plan, and plans for a new facility. He said it is important for the board to begin to look at governance.

Mr. Archuleta distributed copies of the NMERB Strategic Plan for FY 2017-2019, and reviewed items on a list of Board Evaluation Criteria for consideration by the board (page 244). This list was developed by presenter Julia A. Nicholson and distributed at the recent CAPPP conference. He said suggestions or comments about the Strategic Plan or Evaluation Criteria were welcome.

The board scheduled a retreat on August 25, the day before the next board meeting. Ms. Nicholson would be present to facilitate.

13. EXECUTIVE SESSION: 10:40 a.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 (New Mexico Court of Appeals);**
 - 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);**
 - iii) ***In re Credit Default Swap Antitrust Litig.*, Case No. 1:21-cv-00606-KJG-JHR (U.S. District Court, New Mexico); and**
 - iv) **EEOC #39B-2022-00060.**

Ms. Cameron 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 10:50 a.m.]

14. ACTION FROM EXECUTIVE SESSION

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

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.


15. NEXT MEETING: FRIDAY, AUGUST 26, 2022 – ALBUQUERQUE

16. ADJOURN: 10:55 a.m.



Russell Goff, Chairman

ATTEST:



Larry Magid, Secretary