



**MINUTES OF THE
NEW MEXICO EDUCATIONAL RETIREMENT BOARD OF TRUSTEES
REGULAR MEETING
December 8, 2023**

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 phone]
Mr. Larry Magid, Secretary
Hon. Laura M. Montoya, NM State Treasurer
Mr. Max Baca
Dr. Donald W. Duszynski
Dr. Matias Fontenla
Mr. Antonio Oritz [by phone]

Members Excused:

Mr. Mario Suazo

Staff Present:

Mr. David Archuleta, Executive Director
Mr. Mark Canavan, Investment Office, Real Estate & Natural Resources
Mr. Randall Cherry, General Counsel
Mr. Lawrence Esquibel, Deputy Director
Ms. Renee Garcia, Communications Director
Mr. Bob Jacksha, Chief Investment Officer
Ms. Monica Lujan, Member Services Director
Mr. Robert Shulman, Assistant General Counsel
Mr. Kevin Swinson, Chief Information Officer
Ms. Jenna Vigil, Benefit Services Bureau Chief

Ms. Ariana Wakefield, Executive Assistant
Mr. Peter Werner, Portfolio Manager, Fixed Income

Others Present:

Mr. Allan Martin, NEPC
Mr. Sam Austin, NEPC
Mr. J.R. Rael, Deputy State Treasurer
Ms. Judith Beatty, Board Recorder
Ms. Dana Woolfry
Mr. Thomas Tyle

b. Approval of Agenda

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

c. Approval of Minutes

- **October 13, 2023**

Treasurer Montoya moved approval of the minutes of the October 13, 2023, meeting. Mr. Magid seconded the motion and it passed unanimously.

d. Introduction of Guests

Chairman Goff welcomed guests and staff.

PRESENTATION RECOGNIZING MAX BACA

Communications Director Renee Garcia made a presentation honoring Max Baca for his leadership for more than 30 years in higher education, and for his vision and dedication in turning New Mexico Highlands University “into a shining example of technological efficiency, and for your dedication, your passion, your unwavering belief in the power of education, the countless lives you’ve touched, the futures you’ve shaped and the mountains you’ve moved.”

2. CONSENT AGENDA: BOARD TRAVEL

Chairman Goff, Ms. Cameron, Mr. Magid, and Dr. Fontenla asked to attend the NEPC conference on February 1 in Pheonix.

Mr. Baca moved approval of these requests. Treasurer Montoya seconded the motion, which passed unanimously.

3. ARP – CAPTRUST OVERVIEW AND UPDATE: JARED HARDIN, CAPTRUST

Mr. Hardin presented an overview of CAPTRUST and the work it has done for the ARP plan and ARP Committee over the years.

4. ALTERNATIVE RETIREMENT PLAN (ARP) COMMITTEE REPORT: MAX BACA

a. ARP Committee Meeting – December 7, 2023

Mr. Baca summarized the discussion and action taken at the ARP Committee meeting on December 7, 2023:

- Received an interim update from CAPTRUST indicating the completion of Vanguard inflation-protected Security share class changes and the addition of Luna Community College and Southeast New Mexico College to the TIAA Fidelity platform and the reduction of the recordkeeping fees charged by Fidelity as a result of the recent contract extension to 2027. Fidelity lowered their fee 4 basis points beginning in January 2024.
- CAPTRUST provided a defined contribution quarterly overview and fiduciary training, which is typically done every one to two years.
- Approved CAPTRUST recommendations to reimburse respective participants in the form of an account credit with deposits to the participants' accounts as follows: TIAA's participants, \$38,750 and Fidelity, \$24,000. Nearly \$63,000 will go back to the accounts.
- Reviewed the target date fund comparison and fund lineup recommendations. The committee approved CAPTRUST'S recommendation to keep the following investments on the watchlist: Oakmark International Institutional; PIMCO Total Return Instl; and T Rowe Price Blue Chip Growth I.
- The next meeting is scheduled for June 27, 2024 at 9:00 a.m.

Mr. Magid moved to approve the ARP Committee report. Dr. Fontenla seconded the motion, which passed unanimously.

5. ACTUARIAL VALUATION REPORT: DANA WOOLFREY, FSA, & THOMAS LYLE, FSA – GABRIEL ROEDER SMITH & COMPANY

a. Actuarial Valuation Report

Ms. Woolfrey presented this report.

Ms. Woolfrey stated that, for the first time since the board set the goal in 2018 of eliminating the UAAL by June 30, 2049, contribution rates are now

sufficient to eliminate the UAAL by that date. The funding policy contribution rate is 17.85 percent of pay, which is less than the statutory rate of 18.15 percent.

Ms. Woolfrey said the funding period and UAL projections are based on the following assumptions:

- Future market earnings, net of investment-related expenses, will equal 7.00 percent per year (unless stated otherwise)
- Phases in deferred asset gains/losses
- No benefit changes or other demographic gains/losses
- No change in number of active members
- Accumulated savings from expected COLAs lower than the 1.8 percent while funded ratio is less than 100 percent
- Active members who leave employment will be replaced by new entrants each year
- Starting pay for each cohort of replacement hires increases 3 percent each year
- Employer and member contributions will remain a constant percentage of payroll

Treasurer Montoya moved for approval of the report. Dr. Fontenla seconded the motion, which passed unanimously.

b. Intro to Experience Studies

Mr. Lyle presented a primer on the experience study to be presented to the board in February 2024.

6. RETIREMENTS: JENNA VIGIL, BENEFIT SERVICES BUREAU CHIEF; MONICA LUJAN, MEMBER SERVICES DIRECTOR

a. Disability Retirements

Ms. Vigil reported that there were 33 disability cases for calendar year 2023, with 8 cases in the October-November period.

b. Age and Service

Ms. Lujan stated that NMERB retirements for the bimonthly period of October-November were seasonal with nothing unusual to report.

Ms. Lujan reported that, during the October-November period, 2 members were approved for disability benefits, 26 reciprocity applications were received, and there were 282 applications received for normal retirements, for a total of 310 applications.

Ms. Lujan said 25 members had 30+ years of service and five had 40+ years of service during the bimonthly period of October-November.

Mr. Baca noted that nearly half of the retirees over the last several months were below 62 and only 30 (approximately) out of the 310 retirements for the bimonthly period were 70 and above. As the NMERB analyzes the numbers of the retirees who submit Return to Work applications over the next couple of years, it will have a better idea of what kind of recommendations to make going forward.

Responding to Chairman Goff, Ms. Lujan said there are 162 Return to Work (36 month) applications.

Mr. Baca moved to accept the Disability Retirements and Age and Service reports. Dr. Duszynski seconded the motion, which passed unanimously.

7. EXECUTIVE DIRECTOR'S UPDATE: DAVID ARCHULETA, EXECUTIVE DIRECTOR

a. Retiree Health Care Authority

Mr. Archuleta summarized action taken by the NMRHCA at its December meeting.

- Fund assets were reported at \$1.2 billion.
- The Taos Soil & Water Conservation District was approved as a participating employer in the NMRHCA program.
- Based on the latest GASB 74 actuarial evaluation, total OPEB liabilities were \$3 billion, offset by \$1.3 billion in assets for a 44.16 percent funded ratio.
- Discussion continued on the board's concerns about consolidation into the New Mexico Health Care Authority (HCA). The Executive Director has requested that the NMRHCA's participation be postponed for one year to allow an opportunity to study what impact this would have on the NMRHCA membership.

b. Operational Updates

Mr. Archuleta presented highlights from his report.

Mr. Archuleta referred to his October 30 letter to school superintendents regarding a significant increase in the number of Return to Work violations over the past year. The letter states that the NMERB recently updated its employer contribution form to require that HR offices certify that all requisite

approvals have been obtained prior to allowing a retiree to commence work. The hope is that the number of new violations will significantly decline.

Mr. Archuleta said he realizes the board is frustrated, especially when it hears from members who have violated the program. However, there are limitations on what the NMERB can do administratively and legally to solve the problem. Legal staff, Member Services staff, and Administrative Services staff are meeting together to discuss ways of identifying violators sooner and communicating this information to them sooner. He added that some of these problems are going to go away as the NMERB upgrades its system. He said the NMERB plans to send a letter to members shortly after they retire to remind them about the requirements of the Return to Work program should they decide to apply.

Mr. Baca suggested that Mr. Archuleta expand the October 30 letter to include higher education groups. Mr. Archuleta agreed, adding that he would send a letter to the head of any institution where violations have been identified.

Treasurer Montoya said she has also written a letter to every educational group and board she could think of, including the Governor's Office, regarding her concerns about the unfairness of the NMERB's Return to Work process for its retirees. She said she understands that it is NMERB policy and not state statute that requires the fees be repaid, and therefore she feels the board should schedule a review of the policy in order to fix it and make it better. She commented that some payback amounts are prohibitively high, and that most people in New Mexico do not even have a month's worth of income to suffice should something catastrophic happen to them. She offered to ask the Governor to put this on the call during the upcoming legislative session.

c. Other

None.

8. INVESTMENT REPORTS: BOB JACKSHA, CIO

a. Investment Policies Update

[Presenter: Pete Werner, NMERB Fixed Income portfolio manager]

Mr. Werner stated that, because Bloomberg would start charging the NMERB \$45,000 a year for the use of the Bloomberg Barclays Capital U.S. Aggregate Bond Index, the NMERB has replaced it with the FTSE/Russell USBIG Index in the Core Fixed Income Investment Policy. In the 25 years he has managed bond funds, the Lehman Ag (as it used to be known) has always been free

and was the benchmark that most funds used. The model is changing, and investment banks that used to provide them are ending up with companies that are more dedicated to supplying data analysis and charging for it. The change being requested is a cost-saving measure for the NMERB and is the closest match to the Bloomberg index.

Mr. Jacksha said Wilshire intends to start charging \$1,000 for access and use of their REIT index, while the MSCI US REIT index can be used at no cost. The MSCI closely tracks the Wilshire REIT, so there will be little difference between them, and it is a cost-saving measure. Also, the NMERB uses the index to measure the performance of Brookfield, its one outside manager that it has in REITs.

Treasurer Montoya moved the board approve the changes to the Fixed Income Investment Policy Statement. Dr. Duszynski seconded the motion, which passed unanimously.

Treasurer Montoya moved to approve the Investment Policy Statement for the REIT Index. Dr. Duszynski seconded the motion, which passed unanimously.

b. Q3 2023 Investment Report

[Presenter: Allan Martin, NEPC]

Mr. Martin presented this report, which the following highlights:

- Over the past 5 years, the fund returned 7.3 percent per annum.
- Over the past 3 years, the fund returned 9.4 percent per annum.
- For the year ending September 30, 2023, the fund experienced a net investment gain of \$1.3 billion, which includes a net investment loss of \$17.1 million during the quarter. Assets increased from \$14.9 billion 12 months ago to \$15.9 billion on September 30, 2023, with \$364.0 million in net distributions during the year. The fund returned 8.8 percent for the year, underperforming the policy index by 99 basis points and ranking in the 77th percentile of its peers.

Mr. Martin reviewed the Private Market vs. Public Market Performance report by NEPC, which is done once a year.

Mr. Jacksha stated that the NMERB continues to believe it is worth the effort and expense of investing in private markets.

c. Investment Committee Report

[Presenter: Steve Neel]

Mr. Neel summarized actions taken by the Investment Committee this morning:

- Reviewed the Q2 Real Estate and Natural Resources report.
- Reviewed the Q2 Infrastructure report.
- Reviewed the Investment Policy benchmark changes.
- Looked at the Derivatives Compliance Report. The NMERB is well within limits.

d. Other Investment Reports and Discussion

Chairman Goff thanked Allan Martin for his many years of service to the board and the retirees and wished him a happy retirement.

9. OPEN MEETINGS ACT RESOLUTION FOR 2024: RANDALL CHERRY, GENERAL COUNSEL

Mr. Cherry requested approval of the Open Meetings Act resolution for 2024.

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

10. BOARD POLICIES AND PROCEDURES: RANDALL CHERRY, GENERAL COUNSEL

Mr. Cherry noted that the following change on page 155, line 16, was requested by Treasurer Montoya:

- Board members who believe that they might be subject to a conflict shall disclose the conflict to the General Counsel so that the General Counsel can provide legal advice as to the existence of and proper response to the possible conflict of interest. The General Counsel shall inform the full Board of any possible conflict of interest.

Mr. Cherry expressed concerns on how that should be done as a practical matter. He noted that there is no attorney-client privilege for facts (only for legal advice). Because an allegation of conflict of interest is simply a fact, he recommended that the language be crafted so that attorney communications would be protected while also providing appropriate transparency.

Treasurer Montoya said that, on the 15 boards and commissions she serves on, a conflict of interest form is signed in January and given to the general

counsel. In one instance, decisions were made where it was alleged that one of the board members had a conflict. It had been disclosed on the form, but it was not disclosed on the record, so no one knew about it. Now, every year, the papers will go on a consent agenda so everyone can review them for future reference.

Mr. Cherry clarified that his concern was that requiring a general counsel to inform the board of any possible conflict of interest during a public meeting would negatively impact the member who is the subject of the allegation. He noted that history was shown that such allegations may be unfounded.

Mr. Cherry noted that every general counsel is permitted to provide legal advice to each board member individually and directly, and that communication is protected. But he also reminded members that communication among the board members outside of a scheduled meeting may be an Open Meetings Act violation. Mr. Cherry also reminded the members that any discussion during a meeting about a conflict cannot be conducted in executive session because it is not related to litigation or a threat of litigation.

Mr. Baca said adding language that states “as long as it does not violate the Open Meetings Act” would seem to cover that concern. He suggested that the General Counsel could send communications to each member informing the board about a conflict of interest. This would not violate the Act or create a rolling quorum.

Mr. Cherry agreed, clarifying that his concern was simply that someone in the future might interpret the requirement that the conflict be reported to the “full board” to mean that the General Counsel must report the conflict during a board meeting. Mr. Cherry suggested that simply replacing “full board” with “all board members” would remove the ambiguity.

Mr. Cherry reviewed other highlighted changes from the draft document. There were no questions.

Treasurer Montoya moved to table this item to the February meeting. Mr. Baca seconded the motion, which passed unanimously.

11. COURT OF APPEALS CASE NO. A-A-C-40106: RANDALL CHERRY, GENERAL COUNSEL

Mr. Cherry discussed the conclusions drawn by the Court of Appeals in upholding the declaratory judgment from the District Court.

12. EXECUTIVE SESSION: 12:20 P.M.

Chairman Goff moved to enter executive session for the following purpose:

- a. Pending litigation in which the Board is a participant (session closed per §10-15-1(h)(7). Update regarding:**

Katherine Chippeaux, Robert Jacksha, Duncan Manning, Nathan Sax, and Pete Werner v. The State of New Mexico, Educational Retirement Board and Department of Finance and Administration: Case No. D-101-CV-2023-01297 (1st Judicial District Court, Santa Fe); Luke A. Salganek, Miller Stratvert P.A., legal counsel to the Board.

Mr. Baca seconded the motion, which passed on the following roll call vote:

For: Chairman Goff; Secretary Magid; Treasurer Montoya; Mr. Baca; Dr. Duszynski; Dr. Fontenla.

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

13. ACTION FROM EXECUTIVE SESSION: 12:50 P.M.

Chairman Goff moved to come out of executive session. The only matter discussed in executive session was pending litigation in which the board is a participant regarding:

Katherine Chippeaux, Robert Jacksha, Duncan Manning, Nathan Sax, and Pete Werner v. The State of New Mexico, Educational Retirement Board and Department of Finance and Administration: Case No. D-101-CV-2023-01297 (1st Judicial District Court, Santa Fe); Luke A. Salganek, Miller Stratvert P.A., legal counsel to the Board.

Mr. Baca seconded the motion, which passed on the following roll call vote:

For: Chairman Goff; Secretary Magid; Mr. Baca; Dr. Duszynski; Dr. Fontenla.

14. NEXT MEETING: FRIDAY, FEBRUARY 23, 2024 – ALBUQUERQUE

15. ADJOURN: 12:50 P.M.

Russell Goff, Chairman

ATTEST:

Larry Magid, Secretary