



State of New Mexico
Educational Retirement Board

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MINUTES OF THE
NEW MEXICO EDUCATIONAL RETIREMENT BOARD OF TRUSTEES
REGULAR MEETING
February 23, 2024

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
Mr. Larry Magid, Secretary [telephonically]
Hon. Laura M. Montoya, NM State Treasurer
Mr. Max Baca
Dr. Donald W. Duszynski
Dr. Matias Fontenla
Mr. Antonio Ortiz
Mr. Mario Suazo

Members Excused:

None

Staff Present:

Mr. David Archuleta, Executive Director
Mr. Randall Cherry, General Counsel
Mr. Lawrence Esquibel, Deputy Director
Mr. Bob Jacksha, Chief Investment Officer
Ms. Monica Lujan, Member Services Director
Mr. Jacob Maule, Deputy General Counsel
Ms. Renada Peery-Galon, ASD Director/Chief Financial Officer
Mr. Kevin Swinson, Chief Information Officer
Ms. Jenna Vigil, Benefit Services Bureau Chief
Ms. Ariana Wakefield, Executive Assistant

Others Present:

Mr. John Kreienkamp, Designee of State Treasurer Laura M. Montoya
Mr. Sam Austin, NEPC
Ms. Dana Woolfrey, GRS
Mr. Thomas Lyle, GRS
Mr. Aaron Hamilton, Moss Adams
Mr. Kory Hoggan, Moss Adams
Ms. Judith Beatty, Board Recorder

b. Approval of Agenda

Items 12.a and 12.c (under Executive Session) were removed from the agenda.

Treasurer Montoya moved approval of the agenda, as amended. Ms. Cameron seconded the motion, which passed unanimously.

c. Approval of Minutes

- **December 8, 2023**

Dr. Duszynski moved approval of the December 8, 2023, minutes. Dr. Fontenla seconded the motion, and it passed unanimously.

d. Introduction of Guests

Chairman Goff welcomed guests and staff.

2. CONSENT AGENDA: BOARD TRAVEL

No requests.

3. ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2023: KORY HOGGAN, PARTNER; AARON HAMILTON, SENIOR MANAGER MOSS ADAMS LLP

Ms. Peery-Galon distributed copies of the 2023 PAFR (Popular Annual Financial Report) to board members.

Messrs. Hoggan and Hamilton said Moss Adams issued the following reports for the year ended June 30, 2023: (1) Audit report on the financial statements; and (2) Government Auditing Standards report on internal control over financial reporting and on compliance and other matters. The NMERB received a clean opinion on both.

Treasurer Montoya moved to approve the audit. Mr. Baca seconded the motion, which passed unanimously.

4. PRESENTATION OF JUNE 30, 2023, EXPERIENCE STUDY: DANA WOOLFREY, FSA, THOMAS LYLE, FSA, GABRIEL ROEDER SMITH AND COMPANY

Ms. Woolfrey and Mr. Lyle presented this report.

Recommendations:

- Forward-looking Inflation Metrics: Leave 2.30% inflation assumption unchanged
- Leave 7.00% investment return assumption unchanged.
- Salary Increases:
 - Modify across the board salary increases. Increase assumption to 1.1% from 1.49% for long-service members.
 - Modify service-related increases based on experience. Actual increases observed were notably higher than the assumption. Recommend modest increases to assumption.
- Total Payroll Growth: Leave the new-hired pay growth assumption at 3.0% to limit the increased reliance on future pay. Based on 2.30% inflation assumption, across the board increases of 1.1%, and 3.0% growth of new hire pay, resulting total payroll growth is 2.8%.

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

[Treasurer Montoya stepped away from the meeting at this point and Mr. Kreienkamp, her designee, was present during her absence from 10:15-10:22 a.m.]

5. AUDIT COMMITTEE REPORT: MARY LOU CAMERON, CHAIR

Ms. Cameron reported that the Audit Committee held a virtual meeting on January 24, 2024. In attendance were herself; John Kreienkamp, designee of State Treasurer Montoya; and Antonio Ortiz. She said the committee heard a summary of internal audit observations, a discussion of the FY24 priorities, and the findings and recommendations of the most recently completed review of investment operations. The focus of the investments operations review was to determine whether processes and controls related to investment operations were in compliance with NMERB policies and procedures and sound internal controls. All new observations were identified

as low risk, and one previously identified high-risk observation regarding cash reconciliation has been resolved.

Ms. Cameron moved for approval of the Audit Committee report. Dr. Duszynski seconded the motion, which passed unanimously.

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

a. Disability Retirements

Ms. Vigil reported that there were 6 cases for the December-January period. There were a total of 39 disability cases for CY 2023.

Ms. Vigil stated that, as of January 22, 2024, the NMERB has transitioned its disability claims review from previous vendor Maximus Federal to MMRO (Managed Medical Review Organization). All data from the previous vendor was electronically transferred to ensure a seamless transition.

b. Age and Service

Ms. Lujan reported that, for the December-January period, 4 members were approved for disability benefits, 16 reciprocity applications were approved, and 169 normal retirements were approved, for a total of 189 applications for the bimonthly period.

Responding to Mr. Baca, Mr. Archuleta said that, this morning, there were 220 return-to-work applications for the 36-month program. Growth is at the rate of about 10 applications per week, which is not a substantial increase.

Mr. Archuleta said that more than 4,000 people have been approved overall for one return-to-work program or another. He said he would provide a detailed report at the April meeting.

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

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

a. Retiree Health Care Authority

Mr. Archuleta presented highlights from his report:

- Through legislation adopted this year creating the Health Care Authority (HCA), certain duties and responsibilities

currently assigned to the NMRHCA board will be assigned to the HCA. Details of the final plan have yet to be determined.

- Market value of investments for period ending November 2023: \$1.3 billion.
- Senate Joint Resolution 5, which would have extended the same constitutional protections afforded to PERA and NMERB, died on the Senate floor. Senate Bill 14 (Health Care Authority) passed and was sent to the Governor for her signature. The bill includes certain requirements regarding the approval of contracts by the HCA Secretary rather than the NMRHCA board of directors.
- NMRHCA staff reported a clean audit for FY 2023.

b. Agency Activities

Mr. Archuleta presented highlights from his report:

- ASD staff updated NMERB's travel policy to align with the recent changes to the NM Administrative Code 2.42.2 Regulations Governing the Per Diem and Mileage Act. An updated travel training will be provided to the Board of Trustees in April.
- Member Services Call Center: Number of calls handled during the initial call were 91.11%, close to the 95% target.
- New return to work applications processed as of January 31: 153 (45 for the 36-month program). Total through 2-23-2024: 224.
- The IT team received approval in January from DoIT for certification of \$7.4 million to continue improvements to the NMERB's pension administration system.
- Following a recommendation by Trustee Baca, NMERB staff has created a "Steps to Retirement" link on the NMERB homepage.
- NMERB staff will be collaborating with Jump\$tart New Mexico Coalition for Financial Literacy, NMPED, St. Johns College and Nusenda Credit Union to increase financial literacy among educators and students by introducing personal finance standards in their classroom instruction.

c. Legislative Update

Mr. Archuleta stated that Senate Memorial 4, sponsored by Sen. Mimi Stewart, and House Memorial 1, a duplicate bill sponsored by Reps. Joy Garratt and Eleanor Chávez, were for the purpose of conducting a study on equalizing the pension benefits of the NMERB and PERA. He commented that this would probably be a huge undertaking and it is very difficult to figure out what it would take to account for all of the back earnings that would be required to come up with equal pension benefits. Although neither memorial made its way to the floor, there is always the possibility that this could be brought before the LFC during the interim.

d. July 1, 2024, COLA Adjustment and Anti-Spiking Threshold

Mr. Archuleta stated that the NMERB received a notice from GRS on January 11 regarding the COLA that eligible members can expect to receive as of July 1, 2024. Members with 25 or more years of service credit whose monthly annuity is less than or equal to \$1,746.63 will receive an annual adjustment of 1.89%. All remaining non-disability retirements will receive an annual adjustment of 1.68%.

e. Other

None.

8. INVESTMENT REPORTS: BOB JACKSHA, CIO

a. December 2023, Quarterly Performance Report

[Presenter: Sam Austin, NEPC]

Mr. Austin presented this report, with the following highlights:

- Over the past 5 years, the fund returned 8.7 percent per annum.
- Over the past 3 years, the fund returned 7.6 percent per annum.
- For the year ending December 31, 2023, the fund experienced a net investment gain of \$1.3 billion, which includes a net investment loss of \$490 million during the quarter. Assets increased from \$15.3 billion 12 months ago to \$16.3 billion on December 31, 2023, with \$307.6 million in net distributions during the year. The fund returned 8.7 percent for the year, underperforming the policy index by 178 basis points and ranking in the 91st percentile of its peers.

Mr. Jacksha noted that the current allocation in Private Equity is at 22.6%, which is 5.6% over the policy target of 17.0%, reflecting unexpectedly large returns over the last couple of years. Pacing was considerably slowed in 2023 as a result. Going forward, NMERB will still be making commitments, but they

will be a lot smaller and will be fewer. Over time, the existing investments will mature and run off, and the number will naturally come down, but it will take two or three years to get down to the target.

Treasurer Montoya questioned why the Private Equity policy range was 0-35%, and suggested that, when the asset allocation is reviewed again, the board consider changing policy ranges to make them more reasonable not only in terms of being realistic and prudent, but also beneficial to the NMERB's operations.

Mr. Jacksha responded that the range shouldn't be construed to mean that the NMERB is going to try to get to either end. If there is some short-term tactical reason for varying from the target, that would be discussed. Secondly, the NMERB intentionally made the range pretty wide to avoid being slightly over a target and being forced to sell at a discount. He said the NMERB could look at narrowing the range the next time the asset allocation comes up for review.

Mr. Austin added that staff needs the flexibility to be able to manage the portfolio intelligently without calling an emergency meeting to change the policy or sell assets.

b. Investment Committee Report

Mr. Jacksha reviewed actions taken by the Investment Committee at its meeting this morning:

- Accepted the Q4 Proxy Voting Report.
- Recommended that the board take up the topic of Investment Staff Compensation at the April meeting.
- Reviewed the Q2 Private Equity Report.
- Reviewed the Q4 2023 Commission Report.
- Looked at the Derivatives Compliance Report. The NMERB is well within limits.

c. Staff Selection Committee Report

Mr. Jacksha and Mr. Neel reported on actions taken by the Staff Selection Committee at the December and February meetings:

- Natural Resources: Approved a \$50 million commitment to Basin Oil and Gas Management. Basin pursues exploration and development of oil and natural gas.
- Natural Resources: Approved a \$50 million commitment to Ecosystem Investment Partners V, which does mitigation banking. This is the fourth fund the NMERB has invested in with them.

- Real Estate: Approved a \$50 million commitment to Arrow Mark Structured Finance Fund, a real estate debt fund. This is a first-time commitment for the NMERB. They will primarily buy real estate debt. The market is under pressure because of the rise in interest rates, and the fund feels there is an opportunity to make some very good returns.
- Private Equity: Approved a \$40 million commitment to Edison Partners Fund XI. This was the fifth commitment that the NMERB has made to the Edison platform. This is a growth equity GP focusing on the micro capital part of the market.
- Private Equity: Approved a \$40 million commitment to Lightyear Fund VI. Lightyear invests in middle market financial services in a control buyout structure, executing a strategy of creating value through financial engineering, structuring, and tactical execution.
- Approved a two-year extension of NEPC's private equity contract, under the same terms and conditions, for \$110,000 with a 2% escalator.

d. Other Investment Reports and Discussion

Mr. Neel distributed a memorandum providing an update on the NMERB's investment exposure to Russia in aircraft leasing. In April 2022, staff had briefed the board regarding the Russian nationalization of five aircraft that were leased to Aeroflot. These aircraft were held in NMERB's Aerospace Opportunities portfolio. After multiple regulatory and administrative hurdles, NMERB has generated a positive return on the original \$150 million investment and received payment for the aircraft from Aeroflot. NMERB is pursuing additional compensation from insurance carriers to enhance the total return.

[Break.]

9. Q2 PERFORMANCE REPORTING: LAWRENCE ESQUIBEL, DEPUTY DIRECTOR

Mr. Esquibel presented an update on the status of the NMERB's performance metrics through the end of Q2. [Pages 244-253]

Mr. Esquibel stated that the Executive team continues to strive for improvements across all segments of the agency, and vacancies are something that they deal with all the time. HR has been working very hard in the posting of positions, scheduling interviews, and extending offers to candidates in a timely manner.

Responding to Mr. Suazo, Mr. Archuleta stated that there were six vacancies as of yesterday, all of which are in the process of being filled. Treasurer

Montoya said she believed this was the lowest vacancy rate across state government.

Dr. Duszynski asked if salaries are competitive with the national market or at least the local market.

Mr. Archuleta responded that Investment staff has presented information about investment salaries, which are probably below market when compared to other similarly sized organizations across the nation. When compared to PERA or the SIC, however, the NMERB is probably in line or close to it overall, although he could not speak to salary differences position by position. As far as non-exempt staff, NMERB is trying to make salaries as competitive as possible. For example, NMERB recently raised the minimum salary for range 55 employees who are answering the phones in Member Services from \$20 to \$22 per hour. Typically, there is high turnover in this area, and the hope is that this will incentivize employees to stay longer. He noted that vacancy rates are down compared to two years ago.

Mr. Archuleta said the court case states that the NMERB has the authority to set salaries for its employees, and the NMERB is waiting for action to come from another court before additional decisions are made in terms of what is either required or what the board's desire is, or based upon his own direction on what the NMERB will pursue next.

Mr. Baca asked when the last compensation survey was done for the NMERB.

Mr. Archuleta responded that there are several organizations that do annual compensation studies that the NMERB contributes to. He said it is not a surprise that the NMERB falls below the norm on these peer studies.

10. BOARD POLICIES AND PROCEDURES: DAVID ARCHULETA, EXECUTIVE DIRECTOR; RANDALL CHERRY, GENERAL COUNSEL

Mr. Archuleta stated that the board reviewed the first draft in December, after which comments were received from Treasurer Montoya, Dr. Duszynski, Mr. Baca and Dr. Fontenla. He said the document will be reviewed annually going forward.

Mr. Archuleta stated that reference to board members disclosing travel paid for by an entity outside of NMERB was deleted, since NMERB would be paying for all board member travel.

Treasurer Montoya asked if the policy states that the board approves both the benchmark and asset allocation. [Page 7.]

Mr. Jacksha responded that this is included in the Investment Policy Statement, which is approved by the board.

Treasurer Montoya said she thought there should be some reference to the asset allocation, and suggested the following amendment to B.3 on page 7:

“Preserve the Fund through the Board Investment Policy by benchmarking and determining asset allocation of investments and monitoring performance.”

Treasurer Montoya moved to approve the Board Policies and Procedures, with the amendment. Dr. Fontenla seconded the motion, which passed unanimously. [Not present: Mr. Magid]

11. RULE CHANGES: RETURN-TO-WORK; LOCAL ADMINISTRATIVE UNIT – INCORRECT REPORTING PENALTY: DAVID ARCHULETA EXECUTIVE DIRECTOR

Mr. Archuleta stated that the proposed rule would allow the member a grace period to come into compliance once they have been identified as a violator. As an example, if someone in a plan has already sat out 6 months, 90 days, etc., then the NMERB would give them a 30-day grace period to come into compliance. If they ignore this, the NMERB would claw back 100% of the benefits the member would have received during that period. If they decide to fill out an application, the clawback would be 25%.

Mr. Archuleta said the rule change also locks a retiree into one program or another for one fiscal year, since some members are gaming the system by toggling over to the 36-month limit once they hit the limit on another plan.

Mr. Archuleta said the rule will allow the NMERB to pass on a penalty to the Local Administrative Unit when they are found to be in violation. The first violation will impose a penalty of \$500, increasing by \$1,000 for the second violation, and \$1,500 for the third and any subsequent violation.

In addition to the communication that the NMERB will be sending to the heads of any institutions in violation, Mr. Archuleta said the NMERB will also notify the Office of the State Auditor. The OSA has indicated that they would let their IPA know so they can be alerted to this issue.

Mr. Archuleta said he hoped the combination of these actions would lessen the pain for members while providing some flexibility for the NMERB in meeting its fiduciary responsibilities.

Mr. Cherry stated that, currently, an independent contractor is required to fill out an independent contractor application. This has been in the policy for the last 20 years, and now has been added to the rule.

Dr. Fontenla commented that if the NMERB finds that someone has been in violation within a month, the clawback is 25%, but if the NMERB doesn't find out for several months that somebody is in violation, then it is the member who is being punished because the NMERB isn't taking any responsibility.

Mr. Archuleta pointed out that it is the retiree who ultimately is responsible because they have signed a document stating that they need permission before they return to work.

Dr. Fontenla agreed, but thought the NMERB should dig deeper into this and change the law and regulations to make it cleaner.

Mr. Baca commented that the NMERB is in a Catch-22 situation right now and he will feel more comfortable when the new system is rolled out and will automatically flag members when a problem is identified.

Treasurer Montoya referred to section 22-11-25.1(c) and (d).

- c. A retired member who returns to employment with a local administrative unit in accordance with this section is entitled to receive retirement benefits during that employment but is not entitled to acquire or purchase service credit for that employment.
- d. A retired member may return to employment with a local administrative unit only if the member submits an application to return to work, on a form prescribed by the board, the board approves the application and the applicant complies with other application rules promulgated by the board.

Responding to Treasurer Montoya, Mr. Archuleta said section c. means the member is not earning additional service credit when they go back to work, and they are making those nonrefundable contributions and are not boosting their pension.

Regarding section d. Treasurer Montoya said it sounds like the purpose is that if somebody decides to come back to work, it is important that they are not adding more to their pension while still being able to put into the system. Mr. Archuleta responded that obviously there is the fiduciary responsibility of making sure they are not earning any additional service credit while drawing a pension, but the NMERB also must meet IRS 401(A) requirements of not allowing people to just come back to work and earning in the same classification that they were before.

Treasurer Montoya said that answers her question as to why the NMERB has these rules. One is to meet federal compliance requirements while also making sure the member is getting the correct amount of money and the other is that the NMERB is receiving the correct amount of money for the work the member is doing. She asked if that was fair to say. Mr. Archuleta responded yes, in addition to making sure the NMERB is meeting its fiduciary responsibility.

Treasurer Montoya commented that, for her, statute trumps rule, and the NMERB makes the rules and determines them based on current market conditions.

Treasurer Montoya suggested that this was punitive, because if someone retired long before this came into effect and doesn't know about it for one reason or another, the fee is 100% of the person's pension for coming back to work at \$12-\$15 an hour when they actually make \$2,000-\$8000 a month. Regarding imposing a penalty on LAUs, she noted that some school districts in rural areas are very poor, and a \$500 or \$1500 fee would have a more severe impact than it would on a district that was well off financially. She said this was a regressive form of distribution. She said the NMERB is not taking any responsibility in a situation where the mistake is on the NMERB. She wondered if the NMERB would be okay with negative press reports or being sued, and was that a cost effective approach.

Treasurer Montoya said Sen. Linda Lopez has asked her to convey the Senator's concerns to the board that any rule change should not hurt NMERB retirees. Otherwise, the statute should be changed so that the NMERB would be able to do the right thing.

Ms. Cameron said the state obviously needs teachers, but if the NMERB just lets people come back to work shortly after retiring and make double their salary, it is going to have a domino effect. She has pointed out to educators in her district that they are better off financially by staying on the job rather than retiring and returning to work.

Chairman Goff commented that there is a greater effort to double dip in New Mexico than people realize. He has seen numerous examples.

Mr. Baca commented that every time the NMERB catches one person, that is one less aggravated former employee, but it is the ones who fall through the cracks who worry him. He said perhaps language could be added to the draft that would allow for flexibility along with accountability until the new system is put in place.

Mr. Archuleta said the goal is to put this policy in place by the beginning of the fiscal year.

Board members agreed to hold a special meeting on March 12 and to submit comments to Mr. Archuleta in the interim.

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

12. EXECUTIVE SESSION: 12:58 P.M.

- a. Deliberations regarding the Hearing Officer's Recommended Decision in the Administrative Appeal of Donna L. Gallegos, ERB No. 24-01 (session closed per NMSA 1978, § 10-15-1(H)(3). Delilah Tenorio, Assistant Attorney General**
- b. 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-2023-02197 (1st Judicial District Court, Santa Fe); Randall J. Cherry, General Counsel to the Board**

Chairman Goff moved the board go into Executive Session for the following purpose: Deliberations in connection with an administrative adjudicatory proceeding (session closed per Section 10-15-1(H)(3) of the Open Meetings Act), specifically the appeal of Donna L. Gallegos; and discussion of pending litigation in which NMERB is a participant (session closed per Section 10-15-1(H)(7) of the Open Meetings Act), specifically Katherine Chippeaux and Robert Jacksha, et al, v NMERB et al, Case #D-101-CV-2023-01297.

Treasurer Montoya seconded the motion, which passed unanimously on the following roll call vote:

For: Chairman Goff; Ms. Cameron, Treasurer Montoya; Dr. Fontenla; Mr. Ortiz; Mr. Suazo

13. ACTION FROM EXECUTIVE SESSION: 1:35 P.M.

Chairman Goff moved to come out of executive session. The only matters discussed during Executive Session were: Deliberations in connection with an administrative adjudicatory proceeding, specifically the appeal of Donna L. Gallegos; and pending litigation in which NMERB is a

participant, specifically Katherine Chippeaux and Robert Jacksha, et al, v NMERB et al, Case #D-101-CV-2023-01297.

Treasurer Montoya seconded the motion, which passed unanimously on the following roll call vote:

For: Chairman Goff; Ms. Cameron; Treasurer Montoya; Mr. Baca; Dr. Duszynski; Dr. Fontenla; Mr. Ortiz; Mr. Suazo.

Treasurer Montoya made a motion to remand for the Hearing Officer to consider if the doctrine of administration of estoppel excused the respondent from responsibility for not complying with the statutory requirements on return to work and any additional evidence that would bear upon that question and compel the attendance of any necessary witnesses.

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

For: Chairman Goff; Ms. Cameron; Treasurer Montoya; Mr. Baca; Dr. Duszynski; Dr. Fontenla; Mr. Ortiz; Mr. Suazo.

14. NEXT MEETING: FRIDAY, APRIL 26, 2024 – ALBUQUERQUE

15. ADJOURN: 1:35 P.M.



Russell Goff, Chairman

ATTEST:



Larry Magid, Secretary