TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 200 ORGANIZATION AND OPERATION OF THE PUBLIC EMPLOYEES RETIREMENT BOARD

2.80.200.1 ISSUING AGENCY: Public Employees Retirement Association (PERA), 33 Plaza La Prensa, Santa Fe, New Mexico 87507
[2.80.200.1 NMAC - Rp, 2.80.200.1 NMAC, 12/30/15]

2.80.200.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board and the association under the Public Employees Retirement Act.
[2.80.200.2 NMAC - Rp, 2.80.200.2 NMAC, 12/30/15]

2.80.200.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-11-130, 10-11A-4, 10-12B-3, 10-12C-3 NMSA 1978, as amended.
[2.80.200.3 NMAC - Rp, 2.80.200.3 NMAC, 12/30/15]

2.80.200.4 DURATION: Permanent.
[2.80.200.4 NMAC - Rp, 2.80.200.4 NMAC, 12/30/15]

2.80.200.5 EFFECTIVE DATE: December 30, 2015, unless a different date is cited at the end of a section.
[2.80.200.5 NMAC - Rp, 2.80.200.5 NMAC, 12/30/15]

2.80.200.6 OBJECTIVE: The objective of this rule is to establish procedures for the organization and operation of the retirement board.
[2.80.200.6 NMAC - Rp, 2.80.200.6 NMAC, 12/30/15]

2.80.200.7 DEFINITIONS: [Reserved]

2.80.200.8 - 9 [Reserved]

2.80.200.10 RULES AND REGULATIONS:

A. Except as otherwise provided in the Public Employees Retirement Act and rules and regulations periodically adopted in accordance therewith, the board may provide for its organization, operation and procedures by vote of the board at any meeting of the board.

B. The board may promulgate rules and regulations for the administration of the Public Employees Retirement Act, Judicial Retirement Act, Magistrate Retirement Act, Volunteer Firefighters Retirement Act and Deferred Compensation Act.

(1) Prior to the adoption, amendment or repeal of any rule, the board shall, at least 30 days prior to its proposed action:

(a) publish notice of its proposed action in a newspaper with a general statewide circulation; the notice shall:

(i) give the time and place of any public hearing and state the manner in which data, views or arguments may be submitted to the board by any interested person;

(ii) describe the substance of the proposed action, or state the subjects and issues involved;

(iii) include any additional matter required by any law, together with specific reference to the statutory authority under which the rule is proposed; and

(b) afford all interested persons reasonable opportunity to submit data, views or arguments orally or in writing; if the board finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing; the board shall consider fully all written and oral submissions addressing the proposed rule; upon adoption of a rule contested at hearing or otherwise, the board shall issue a concise statement of its principal reasons for adoption of the rule; all persons heard or represented at any hearing, or who submit any writing to be considered in connection with the proposed rule, shall promptly be given a copy of the rule, by mail or otherwise, if such persons so request in writing.

(2) If the board finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the soundness of the fund or general welfare of the association, or if the board for good cause finds that observance of the requirements of notice and public hearing would be contrary to the interests of the association, the board may dispense with such requirements and adopt, amend or suspend the rule as an emergency. The board's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency rule, amendment or suspension. No emergency rule, amendment or suspension shall remain in effect for longer than 60 days, unless notice shall be given within 15 days of the adoption of the emergency rule and a hearing held as provided in this section within 90 days of the notice.
[2.80.200.10 NMAC - Rp, 2.80.200.10 NMAC, 12/30/15]

2.80.200.11 ACTUARIAL ASSUMPTIONS AND USE OF TRUST FUND:

A. Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, the assumptions shall be specified by the board in a manner that precludes employer discretion.

B. No part of the corpus or income of the fund may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries.

C. The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.
[2.80.200.11 NMAC - Rp, 2.80.200.11 NMAC, 12/30/15]

2.80.200.12 - 19 [Reserved]

2.80.200.20 OFFICERS:

A. At the first regular meeting of each calendar year, the board shall elect a chair and a vice-chair. The duties of the officers shall include the following.

(1) The chair shall preside at all regular and special meetings of the board.

(2) The vice-chair shall serve as chair in the absence of the chair.

B. In the absence of the chair and vice-chair, the board may elect a temporary chair to preside at a meeting from which both officers are absent.
[2.80.200.20 NMAC - Rp, 2.80.200.20 NMAC, 12/30/15]

2.80.200.21 BOARD TRAINING AND EDUCATION:

A. New board members shall attend a new board member orientation within two months of being elected or appointed to office. New board member orientation shall be provided by PERA staff and shall include fiduciary responsibility, investing principles, an actuarial primer and an overview of the operations of the association.

B. Each board member shall annually certify his or her compliance with the statutory requirements of Section 10-11-133(F) NMSA 1978 on the form prescribed by the association on or before December 31st of each calendar year.
[2.80.200.21 NMAC - Rp, 2.80.200.21 NMAC, 12/30/15]

2.80.200.22 - 29 [Reserved]

2.80.200.30 VACANCY ON THE BOARD:

A. In the event any member of the PERA board retires from his or her job, resigns from the board or dies, except the ex-officio members of the board, that member shall be considered to have resigned from the board and the board shall, by resolution, declare that office vacant as of the date of the adoption of such resolution. Such resolution shall be adopted within 30 days after the board member's retirement, resignation or death. Members of the retirement board shall serve until their successors have qualified.

B. In the event any member of the PERA board, except the ex-officio members of the board, ceases employment with an affiliated public employer, and is not reemployed by an affiliated public employer from the same membership (state, county or non-county municipal) group from which that member was elected within 30 days, that member shall be considered to have resigned from the board. For purposes of 2.80.200.30 NMAC, the term “ceases employment” shall include leave without pay status that extends for more than 12 weeks.

C. The resolution declaring the vacancy shall be publicized immediately in conjunction with a notice inviting eligible individuals to apply for appointment to the position within 30 days of the publication of notice of vacancy. Publication shall be, at the minimum, by special notice to employees in the affected membership group

through their employers. The board shall select the new member from among the interested persons who apply pursuant to the publication of the notice of vacancy. If no applications are received, the board shall entertain nominations by the members present.

D. Any vacancy of member, except ex-officio member, occurring on the board shall be filled by the remaining board members, even though a quorum not be present, at a regularly scheduled board meeting within 90 days after the adoption of the resolution declaring the vacancy. The member selected to fill the vacancy shall be selected from the membership group, whether state, county or non-county municipal or retired member, which experienced the vacancy. If a vacancy in the municipal membership group is that of a county member, the replacement member shall be a county employee. The selected member shall be appointed to serve for the remainder of the vacated term.

[2.80.200.30 NMAC - Rp, 2.80.200.30 NMAC, 12/30/15]

2.80.200.31 - 39 [Reserved]

2.80.200.40 BOARD MEETINGS:

A. The board shall hold regular meetings on the last Thursday of each month, unless otherwise established by resolution of the board. The board may establish by resolution a different meeting schedule for regular meetings of the board.

B. A majority of the board members shall constitute a quorum at any meeting of the board and each attending member, including the chair, shall be entitled to one vote on each issue.

C. No "proxy" votes shall be allowed.

[2.80.200.40 NMAC - Rp, 2.80.200.40 NMAC, 12/30/15]

2.80.200.41 - 49 [Reserved]

2.80.200.50 COMMITTEES:

A. The chair shall appoint no more than six board members to each of the following standing committees: rules and administration, audit and budget, legislative, investments and deferred compensation investment plan. The disability review committee shall have at least three but no more than five board members. The chair of the board shall appoint the chair of each committee. Though the board shall have standing committees, the board chair reserves the right to cancel any committee meeting and allow the entire board to discuss and act on matters that may be within the subject matter of standing committees.

(1) The rules and administration committee shall consider and recommend to the board new rules and amendments to or repeal of existing rules governing the organization and operation of the board and the association. Administrative matters requiring specific direction from the board may also be considered by the committee.

(2) The audit and budget committee shall provide policy assistance to the board and the executive director of PERA in fulfilling PERA's responsibilities for accounting, auditing, budgeting, and the quality and integrity of the financial reports of the association.

(3) The legislative committee shall consider and recommend to the board proposals for new statutes and amendments to or repeal of existing statutes. The committee shall also monitor the introduction and progress of proposed legislation affecting the board or association and report this information to the board.

(4) The disability review committee is described in 2.80.1000.20 NMAC.

(5) The investment committee shall review and monitor the administration of the investment policy adopted by the board.

(6) The deferred compensation committee shall review and monitor the administration of the deferred compensation plan investment policy adopted by the board.

B. The chair, with the advice and consent of the board, shall appoint an election committee to consist of nine members of the association: four members from state departments, two members from non-county municipal employers, one member from a county employer and two retired members.

(1) The election committee shall serve until replaced by the chair and shall receive no compensation other than that authorized by the Per Diem and Mileage Act.

(2) The duties of the election committee are described in 2.80.200.60, 2.80.200.70 and 2.80.200.80 NMAC.

C. From time to time, the board may authorize, and the chair may appoint, such ad hoc committees as the board finds necessary.

[2.80.200.50 NMAC - Rp, 2.80.200.50 NMAC, 12/30/15]

2.80.200.51 - 59 [Reserved]

2.80.200.60 ELECTION OF RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of retired board member.

B. Any retired member who is receiving a disability or normal retirement pension under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act is eligible for election to a retired board member position.

C. Nominating petitions shall be signed only by retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act. To be eligible, a candidate must have a minimum of 50 nominations. A valid nomination shall include a signature, legible printing of the retiree's name, and one of the following: 1) the last four digits of the retiree's social security number; 2) the retiree's date of birth; 3) the retiree's PERA identification number. A nomination that does not include at least one of these elements may not be counted. A retired member may sign more than one nominating petition for different candidates. The five candidates with the highest number of nominations shall be included on the ballot and the other or others shall be eliminated. The names of the five retired members receiving the highest number of nominations shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

D. In the event any nominee is unable or unwilling to accept a nomination, that nominee's name shall be removed from the ballot and the resulting vacancy on the ballot shall not be filled. If the inability or unwillingness to accept a nomination occurs after the ballots have been printed the election committee shall treat all votes cast for that nominee as void.

E. If only one retiree is nominated for a retired board member position, the election shall be cancelled and that retiree shall automatically be declared the winner for the retired board member position pursuant to 2.80.200.80 NMAC.

F. Only retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible to participate in the election of retired board members.

G. The campaign contribution limit of twenty-five dollars ($25.00) contained in Section 10-11-130.1(B) NMSA 1978 (2000) shall apply to each four year term retired board member election.

[2.80.200.60 NMAC - Rp, 2.80.200.60 NMAC, 12/30/15]

2.80.200.61 - 69 [Reserved]

2.80.200.70 ELECTION OF NON-RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of non-retired board member.

(1) Candidates nominated for any non-retired board member position shall be vested members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act.

(2) Only state members, including members under the Judicial Retirement Act or the Magistrate Retirement Act, may nominate candidates for state board member positions. Only county members may nominate candidates for the county board member position. Only non-county municipal members may nominate candidates for the remaining municipal board member positions.

(3) To be eligible, a candidate must have a minimum of 150 valid nominations of non-retired PERA members from the candidate's membership group on his or her nominating petition. A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and one of the following: 1) the last four digits of the member's social security number; 2) the member's date of birth; or 3) the member's PERA identification number. A nomination that does not include at least one of these elements may not be counted. A member may sign more than one nominating petition for different candidates.

(4) The five candidates with the highest number of nominations for each non-retired position shall be included on the ballot and the other or others shall be eliminated. The names of the five non-retired members receiving the highest number of nominations for a position shall be placed on the election ballot in

descending order according to the number of signatures received. In case of a nominating tie, the election committee shall determine the names and order in which they are placed on the ballot by lottery or similar method.

(5) In the event any nominee is unable or unwilling to accept the nomination, his or her name shall be removed from the ballot and the vacancy on the ballot shall not be filled. If such a vacancy occurs after the ballots have been printed, the election committee shall treat all votes cast for that candidate as void.

(6) If only one member is nominated for a non-retired board member position, the election shall be cancelled and that member shall automatically be declared the winner for the non-retired board member position pursuant to 2.80.200.80 NMAC.

(7) All members of record of the membership group for which the election is held shall be eligible to receive a ballot as provided in Subparagraph (a) of Paragraph (8) below, except that only county members shall vote in elections for the county member position, and shall not be eligible to vote in elections for non-county municipal positions. The applicable membership group for any member who is no longer a currently employed, contributing employee of an affiliated public employer shall be determined as of the last date on which the member was a currently employed, contributing employee of an affiliated public employer.

(8) For purposes of the election of non-retired board members, "member of record" shall mean the following:

(a) all persons listed in PERA electronic membership history records as members, including members covered under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act, no more than 60 days prior to the date of mailing ballots;

(b) all persons who have filed with PERA a valid application for membership form 60 days or more prior to the date of mailing ballots;

(c) while members of record shall qualify to receive a ballot, in the case of those new members listed in Subparagraph (b) of Paragraph (8) of Subsection A of 2.80.200.70 NMAC, a written request for a ballot must be made to PERA.

(9) For purposes of the election of non-retired board members:

(a) ballots shall be mailed to all non-county municipal members of record in the case of an election of a non-county municipal board position;

(b) ballots shall be mailed to all county municipal members of record in the case of an election of the county municipal board position; and

(c) ballots shall be mailed to all state members of record in the case of an election of a state board position.

B. The campaign contribution limit of twenty-five dollars ($25.00) contained in Section 10-11-130.1(B) NMSA 1978 (2000) shall apply to each four year term non-retired board member election.

[2.80.200.70 NMAC - Rp, 2.80.200.70 NMAC, 12/30/15]

2.80.200.71 - 79 [Reserved]

2.80.200.80 ELECTIONS: The call of the annual meeting and secret election ballots shall be mailed at least 30 days prior to the annual meeting of the association. Ballots shall be held by the United States post office in a locked box until picked up by the election committee or an independent contractor hired by PERA to assist with the election. To be counted, ballots must be in the United States post office locked box by 12:00 noon on the date set by the association.

A. Each ballot shall contain an affirmation of the member's eligibility to vote.

B. Ballots shall be self-proving and shall be counted by the election committee or an independent contractor hired by PERA to assist with the election. The candidate receiving the greatest number of votes shall be declared the winner for each position. In the event of a tie, the election committee shall select by lottery or similar method the name of the winner. The election committee or an independent contractor hired by PERA to assist with the election shall report the results of the election to the membership at the annual meeting.

C. Members whose ballots have not been delivered to them may request and receive another ballot if the original ballot is returned by the United States post office undelivered to PERA or an independent contractor hired by PERA to assist with the election prior to the close of the election. Members whose ballots have been mutilated or spoiled may request and receive another ballot when, prior to the close of the election, the original mailed ballot is returned by the member to PERA.

D. If the election committee or an independent contractor hired by PERA to assist with the election recommends for good cause that the results of the election be invalidated, and the board adopts such

recommendation, a new election shall be held as soon as possible thereafter and the annual meeting at which the election results are announced shall be continued until completion of the new election.

E. Insignificant departures from the requirements set forth in these regulations pertaining to the conduct of elections shall not invalidate the election unless the results of the election are proven to have been substantially affected.

F. A member shall be considered to be "qualified" for office pursuant to Section 10-11-130(D) NMSA 1978 when the board has accepted the election results and the newly-elected member has been sworn into office.

[2.80.200.80 NMAC - Rp, 2.80.200.80 NMAC, 12/30/15]

2.80.200.81 - 89 [Reserved]

2.80.200.90 BUILDING AND LAND USE: Restrictions on building and land use shall be provided for by the executive director as needed subject to the advice and consent of the board.

[2.80.200.90 NMAC - Rp, 2.80.200.90 NMAC, 12/30/15]

HISTORY of 2.80.200 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: PERA 68-1, (Rule No. 2) Election of Board Members, filed on 7-8-68; PERA 69-1, (Rule No. 2) Election of Board Members, filed on 6-17-69; Rule 200.00, Organization and Operation of the Public Employees Retirement Board, filed on 10-4-79; PERA Rule 200.00 Organization and Operation of the Public Employees' Retirement Board, filed on 11-19-81; PERA Rule 200.00, Organization and Operation of the Public Employees' Retirement Board, filed on 7-1-87; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 10-21-88; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7-1-91; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7-1-93; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 11-1-94; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 12-1-95.

History of Repealed Material:

2 NMAC 80.200, Paragraph 60.5, 60.6, 60.7 - Repealed, 11-15-1997.
2 NMAC 80.200, Paragraph 70.2.1, 70.2.2 - Repealed, 11-15-1997.
2 NMAC 80.200, Paragraph 70.2, 70.2.3, 70.2.4, 70.2.5, 70.2.6, 70.2.7, 70.2.8 - Repealed, 12-15-1999.
2.80.200 NMAC, Organization and Operation of the Public Employees Retirement Board, filed 12-28-2000 - Repealed effective 12/30/15.