



PERA

Public Employees
Retirement Association
of New Mexico

INVESTED IN TOMORROW.

Rules & Administration Committee Meeting

via Zoom

Tuesday, October 11, 2022
9:00am

Committee Members

Paula Fisher, *Chair*
Diana Rosales-Ortiz, *Vice Chair*
Tim Eichenberg

Steve Neel
Roberto Ramirez

AGENDA

- 1. Call to Order**
 - 2. Pledge of Allegiance**
 - 3. Roll Call**
 - 4. Approval of Agenda**
 - 5. Approval of Committee meeting minutes**

A. September 13, 2022 Rules & Administration minutes	Action	Paula Fisher, Committee Chair
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 - 6. New Business**

A. Approval of the Notice of Proposed Rulemaking and Draft Rule Timeline Regarding Hybrid Meetings	Action	Paula Fisher, Committee Chair; Geraldine Garduno, Assistant General Counsel
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 - 7. Adjournment**
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Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Trish Winter at 505-795-0712 or patriciab.winter@state.nm.us at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ms. Winter if a summary or other type of accessible format is needed.



PERA

Public Employees
Retirement Association
of New Mexico

Claudia Armijo
Chair, State Member
Greg Trujillo
Executive Director

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INVESTED IN TOMORROW.

TO: Paula Fisher, Rules and Administration Committee Chair
Claudia Armijo, PERA Board Chair
Greg Trujillo, Executive Director

FROM: Geraldine Garduno, Assistant General Counsel

RE: PERA Proposed Rule Changes 2022

DATE: October 7, 2022

At its next meeting, the Rules and Administration Committee will vote on recommending to the Board to open a rulemaking to amend Rule 2.80.200 to authorize virtual or telephonic participation by Board members at Board and Committee meetings after Executive Order 2020-04 is lifted. This memo outlines Staff's recommendation for its proposed amendment to Rule 2.80.200, excerpted below. Included with this memo is Staff's proposed schedule for the rulemaking, and a full copy of Rule 2.80.200 with Staff's recommended changes.

Rule 2.80.200.40 (B) "Board Meetings"

Rule 2.80.200.40¹ requires amendment to provide for virtual or telephonic participation by Board members at Board meetings. Section 10-15-1 (C) of the OMA states "[i]f otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person..."

Therefore, to satisfy the requirements of the OMA for virtual participation by Board members, staff recommends that paragraph "B" of the current rule be amended and reformatted as follows:

"B. A board member may participate in a board or committee meeting by means of a conference telephone or other similar communications equipment after receiving written approval by the board or committee chair when it is otherwise difficult or impossible for the member to attend the meeting in person. Participation by such means shall constitute presence in person at a meeting. Each

¹ Rule 2.80.200.40 currently reads as follows:

"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, 12/30/2015]"



member participating must be identified prior to speaking and, if participating virtually, shall remain on camera throughout the meeting. All participants shall be able to hear any other participant who speaks during the meeting at the same time, and members of the public shall be able to hear any member who speaks during the meeting.”

The Open Meetings Act does not define “difficult” or “impossible.” Accordingly, the PERA Board may make its own determination of when a member may participate virtually, keeping in mind the requirements of the OMA.

NOTICE OF PERA RULEMAKING

The Public Employees Retirement Association (“PERA”) will consider changes to its rules promulgated under the Public Employees Retirement Act (“PERA Act”). Changes are proposed for the following rule:

1. Rule 2.80.200.40 “Board Meetings”

Rule 200 would be amended to allow for and to describe the requirements for virtual participation by PERA Board members at PERA Board and committee meetings. The rule would be reformatted as necessary.

A formal rulemaking hearing will be held on December [after the 8th], 2022, at 9:00 a.m. in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico, 87507. The rulemaking hearing will also be accessible through Zoom. The Zoom access link will be published on PERA’s website listed below prior to the hearing. Oral comments will be taken at the public hearing. Final action on the rules will occur at the January 2023 special Board meeting of the PERA Board which will be held in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico at a date and time specified in the Board’s Public Meeting Notice. The purpose of the rulemaking hearing is to obtain public input on the proposed amendment to the above-referenced rule. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments on the proposed rule change.

The purpose of the proposed rule change is to allow for and to describe the requirements for virtual participation by PERA Board members at PERA Board and committee meetings.

The authority for the proposed rule changes is NMSA 1978, Section 10-11-130 of the PERA Act and Rule 20.80.200.10 NMAC, which authorize the adoption and promulgation of rules and regulations necessary to carry out the purposes of the PERA Act.

Copies of the draft rules are available in PERA’s Office of General Counsel. Written comments, inquiries or requests for copies should be directed to Geraldine Garduno at PERA’s Office of General Counsel, 33 Plaza La Prensa, Santa Fe, N.M., 87507, or geraldine.garduno@pera.nm.gov or 505-476-9351 or 1-800-342-3422. Written comments should be submitted by the close of business on December [after the 8th], 2022. The full text of the proposed rule changes, as well as the Zoom access link for the public hearing, can be found here: [LINK].

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Patricia Winter at 505-795-0712 or patriciab.winter@pera.nm.gov at least one week prior to the public hearing, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ms. Winter if a summary or other type of accessible format is needed.

PROPOSED RULEMAKING TIMELINE

Draft rule amendments	September 2022
Memo to Rules and Administration Committee (RAC) re rule amendments	October 7, 2022
Agenda for RAC Posted	October 7, 2022
RAC action by vote to recommend to Board to initiate rulemaking	October 11, 2022
Memo to Board re rule amendments	October 15, 2022
Agenda for Board meeting posted	October 24, 2022
Draft rule amendments presented at Board meeting	October 27, 2022
Board action taken by vote on initiating rulemaking	October 27, 2022
Proposed rule and notice of rulemaking submitted to NM Register	October 27, 2022
Proposed rule and notice of rulemaking published in NM Register	November 8, 2022
Proposed rule and notice of rulemaking *also posted on agency website, sunshine portal, PERA offices, and as otherwise required	November 8, 2022
Public comment period	Starts on November 8, 2022
Posting of written comments	Starts on November 8, 2022
Public hearing held by RAC	On or after December 8, 2022
Close of rulemaking record	On December 8, 2022
Compile rulemaking record	After December 8, 2022
Concise explanatory statement and final rule docs prepared agenda for next Board meeting*	After December 8, 2022 but before
Agenda for Board meeting posted (Special Board Meeting)	January 4, 2023
Board adopts, amends or rejects proposed rule (Special Board meeting)	January 8, 2023*

*there is a Board Meeting scheduled for December 13, but if the public hearing is held the 8th or the 9th there is no time to prepare the record, concise explanatory statement and final rule submission and docs before the next agenda posted on December 9 at 5pm for the Board Meeting on December 13th.

Concise explanatory statement provided to public	January 8, 2023
Transmit rule to the State Records Center and Archives	January 19, 2023
Submission due date for publication in NM Register	January 19, 2023
Final regulation published; rule effective date of publication	January 31, 2023

*there is a Board Meeting scheduled for December 13, but if the public hearing is held the 8th or the 9th there is no time to prepare the record, concise explanatory statement and final rule submission and docs before the next agenda posted on December 9 at 5pm for the Board Meeting on December 13th.