

NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
SPECIAL BOARD MEETING

January 14, 2020

This monthly meeting of the Public Employees Retirement Board was called to order by Jackie Kohlasch, Chair, at approximately 9:00 a.m. on the above-cited date in the Senator Fabian Chavez, Jr. Board Room, PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico.

1. Roll Call

Roll call followed the Pledge of Allegiance and indicated a quorum with the following members present:

Members Present:

John Melia - Municipal, Vice Chair
Claudia Armijo - State
Lawrence Davis - Municipal
Tim Eichenberg - *Ex-officio*
Patricia French - Municipal
Dan Mayfield - Retiree
Steve Neel - State
Loretta Naranjo Lopez - Retiree
Shirley Ragin - County
David Roybal - State
Jackie Kohlasch - State, Chair [departs following 5.A]
Paula French - State [joins following 5.A]

Member(s) Excused:

Maggie Toulouse Oliver - *Ex-officio*

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff/General Counsel
Greg Trujillo, Deputy Director
Renada Peery-Galon, Administrator Services Director
Trish Winter, Executive Assistant
Karyn Lujan, SmartSave Plan Manager
Anna Williams, Chief Financial Officer
Misty Schoeppner, Deputy General Counsel
Geraldine Garduño, Assistant General Counsel
LeAnne Larrañaga-Ruffey, Director of Equity
Joaquin Lujan, Co-Head Alpha & Director of Rates & Credit
Kristin Varela, Deputy Chief Investment Officer
Christina Perea, Outreach Division Director

Others Present:

Artie Pepin, Director, Administrative Office of the Courts
Lenora Chavez, Retiree
Jesse Lopez
Joseph E. Montoya, Retiree
Jake Salazar, Retiree

2. Approval of Agenda

[Exhibit 1: Agenda]

The Chair requested a motion to approve the agenda and Ms. Armijo and Ms. Naranjo Lopez responded that they have motions to amend it.

Ms. Armijo moved that approval of the agenda be heard following administering the oath of office to the newly elected members and item 5.C.5, “Resolution No. 20-05 Concerning Board Policy on Legislation” be removed. While overall she thinks the resolution is a good idea, she recommended sending it to a working group to fine-tune it and eliminate any conflicts with the PERA Act, and any inconsistent use of terms. Mr. Eichenberg seconded.

Ms. Naranjo Lopez said she would not approve the agenda because the legislative items 5. D.1. a through c and 5.D.2. a through f were unfair and inequitable. She then read from a prepared statement entitled “Response to NMPERA agenda dated 1-14-2020.” *[Exhibit 2]* Her statement included three amendments to the agenda and Chair Kohlasch identified that there was a motion to amend on the floor and her motion(s) would be heard following the motion on the floor.

In response to Ms. Naranjo Lopez’s statement, Mr. Eichenberg said the item on the floor is approval of the agenda, not discussion of the items on the agenda.

Ms. Armijo explained her motion to Ms. Naranjo Lopez that the new members were to be sworn in and they would vote on approving the agenda.

The motion to move the agenda approval following the item 5.A. 3 and the removal of 5.C., passed without opposition.

5. New Business

A. Oath of Office

- 1. Paula Fisher, State Board Member**
- 2. Shirley Ragin, County Board Member**
- 3. Loretta Naranjo Lopez, Retiree Board Member**

Chair Kohlasch administered the oath of office to the individuals listed above.

Following the oath, the Chair turned the gavel over to Vice Chair Melia and thanked the Board for the opportunity to serve the membership. She hoped the Board would find consensus and work for the membership. She received a round of applause.

4. Approval of Agenda

Ms. Armijo said her original motion included removing item 5.C.5. from the agenda and referring it to a working group or one of the established committees. The resolution requires additional review of conflicts and other issues. Ms. French seconded the amendment.

Mr. Mayfield asked whether the executive director could conduct PERA business if the resolution is not approved. Ms. Armijo indicated that the executive director can perform his duties as outlined in the policies. She said the resolution provides additional clarity regarding delegation to the executive director.

Mr. Davis suggested amending the resolution rather than deferring action.

Ms. Naranjo Lopez identified item 5.C.6. is “another power grab by staff.”

Speaking as a senior person on the Board, Ms. French said the Board does not pass resolutions and then go back and fix errors. If there’s something wrong with the resolution it should be addressed first.

Ms. Armijo identified points within the resolution that required clarification. Vice Chair Melia supported removing it from the agenda and getting on with Board business.

General Counsel Pittard confirmed that the executive director will have necessary authority during the legislative session. She supported deferring action on the resolution and noted it would be helpful for the Board and staff can work with fiduciary counsel, who drafted the resolution, to review and revise it.

The date listed on the agenda was corrected to read Tuesday, January 14, 2020.

The motion to remove item 5.C.5 was unanimously approved.

Mr. Davis moved to approve the agenda as amended. Mr. Mayfield seconded.

Ms. Naranjo Lopez said she had additional amendments. Regarding 5.C.2., transaction of investment business, this would require Board ratification. Ms. French seconded. [withdrawn]

Ms. Armijo said the amendment was a revision to the resolution that would be appropriately handled during discussion of the item. She pointed out that the Board is currently dealing with approval of the agenda. The motion was withdrawn.

Ms. Naranjo Lopez moved to remove all of item D from the agenda. She requested an actuarial report and a cumulative variance report on the items listed under D. She said the actuary report should recommend no changes to the COLA, cap the pension salary at \$100,000 and the multiplier set for everyone at 2.52 percent. Ms. French seconded the motion.

Ms. French said she thought it was more effective to vote against legislation rather than remove it from the agenda. She agreed that actuary studies were necessary. Ms. Naranjo Lopez said without actuarial information the Board has failed to do meet its fiduciary responsibilities.

The motion failed with Ms. Naranjo Lopez casting the sole aye vote.

The motion to approve the agenda as amended [removing item 5.C.5] passed with Ms. Naranjo Lopez voting against.

5. New Business (cont.)
B. Nomination of 2020 Board Officers

Ms. French said in her years on the Board, nominations and voting for the chair and vice chair occurred at the first meeting. She said it was important to have someone in place as chair prior to the session starting.

Chair Nominations:

Ms. French nominated Claudia Armijo.

Mr. Mayfield nominated John Melia.

Mr. Eichenberg nominated David Roybal.

Vice Chair Melia recalled that the change in the nomination and voting procedure was done to allow the nominees an opportunity to formulate some ideas to provide at the next meeting. Ms. French suggested the candidates discuss their goals, etc. at the next meeting when the voting occurs.

Ms. Pittard said the process was changed by the Board in February 2019. Fiduciary counsel worked with Board members on this. It was approved in February and integrated into the new policies and procedures. The change provided for a bifurcated process with the nominations at one meeting and voting at the next meeting.

Thanking Mr. Eichenberg for nomination, Mr. Roybal said he would have to decline.

Ms. Armijo said she had not prepared a statement and Vice Chair Melia conceded that the next meeting would be an appropriate time speak.

Vice Chair Nominations:

Mr. Davis nominated David Roybal.

Ms. French nominated Claudia Armijo.

Mr. Roybal said he was interested in serving as vice chair and had a few thoughts he wanted to share. Those thoughts included ultimate respect to the Board members and PERA staff and all PERA members; collaboration to encourage and value the opinions of everyone; and to promote transparency with public outreach.

Ms. Armijo said she too wanted to emphasize the points Mr. Roybal made. She wanted

to make clear that she takes being a Board member very seriously and the only reason that she may leave the meeting is to attend to her boss. She said she would be prepared to make a statement at the next meeting.

5. C. Approval of 2020 Resolutions

1. Resolution No. 20-01, Open Meetings Resolution

Ms. Pittard said this resolution outlines how notice to the public is given as well as how meetings are conducted. There is one change identified in redline that provides greater consistency within the document.

Notice of meetings are posted on the PERA website and the hallway bulletin board in the PERA building. Due to the frequency of the meetings, they are not published in a newspaper. RFPs are published in a newspaper of general circulation in the State of New Mexico, e.g., *The Albuquerque Journal*.

Ms. Armijo moved to approve Resolution No. 20-01. Ms. French seconded and the motion passed by unanimous voice vote.

2. Resolution No. 20-02, Regarding Authorization to Act on Behalf of PERA to Transact Investment Business Required

Mr. Mayfield moved to approve Resolution 20-02. Ms. Ragin seconded.

Ms. Naranjo Lopez asked to amend the motion requiring Board pre-approval to ensure the Board follows its fiduciary responsibility and has oversight. [*See Exhibit 2*]

Ms. Pittard said this resolution is an operational document that is provided to third parties regarding signatories so the executive director, CIO and deputy CIO can transact business to sign documents, make capital calls, etc. Changing the document as requested by Ms. Naranjo Lopez would conflict with the Investment Policy Statement.

The amendment died without a second.

Mr. Eichenberg asked whether Ms. Pittard supervised investment staff and she responded no, that she coordinates with investment staff and the executive director but she does not directly supervise them. Investment staff reports to the CIO who is a direct report to the executive director.

The motion to pass Resolution 20-02 passed by majority voice vote with Ms. Naranjo Lopez casting the sole nay vote.

3. Resolution No. 20-03, Setting Annual Meeting

Ms. Pittard said the resolution sets the annual meeting, which is required by statute, for September 24, 2020. The final copy has the correct resolution number.

Mr. Eichenberg moved to approve. Mr. Mayfield seconded.

Mr. Eichenberg requested amending the date to a month that has five Thursdays either July or October, to facilitate his attendance. Ms. Armijo seconded.

Ms. Pittard said there is no requirement that the meeting occur in September; however, Resolution 20-04 will need to be amended to reflect a different timeline for the election. The results will not be certified for a period of time.

Ms. French said she didn't see a problem with postponing election results certification. She recalled that one year the annual meeting was held in October. Ms. Pittard said that the date for mailing of the ballots will need to be changed since they must be mailed 30 days prior to the annual meeting. The election timeline may also need to be changed.

Ms. Armijo said any time the Board can make an accommodation for another Board member that should be done.

The last Thursday in October was selected: October 29, 2020.

The motion to amend passed by unanimous voice vote.

The motion as amended passed by unanimous voice vote.

4. Resolution No. 20-04, Calling for Nominations of State, Municipal and Retired Member Positions for a Four-Year Term

Mr. Davis moved approval of Resolution 20-04. Ms. Naranjo Lopez seconded.

Ms. Pittard said the fourth "whereas" needs to reflect the changed date of the annual meeting of October 24, 2020 and Resolution 20-03 needs to be cited.

So moved Ms. Armijo, and seconded by Ms. Naranjo Lopez. The amendment passed by unanimous voice vote.

The main motion as amended passed by unanimous voice vote.

5. Removed from the agenda

6. Resolution No. 20-05, Concerning Board Policy on Legislation

Mr. Mayfield moved to approve and Mr. Neel seconded.

Ms. Naranjo Lopez asked for an amendment adding language that the executive director and Board Chair have to have approval by the Board. There was no second.

Ms. French expressed concern that the session was starting within two weeks and a chair for the Legislative Committee has not been appointed. Ms. Pittard said it has been the Board's practice that the committees remain status quo until new appointments are made. Ms. Kohlasch had been chair and Dan Mayfield vice chair of the Legislative Committee.

Ms. Naranjo Lopez asked about PERA's lobbyist and requested a copy of the contract showing the contract amount and scope of services. Vice Chair Melia requested that staff provide that information.

The motion passed by majority voice vote with Ms. Naranjo Lopez voting against.

D. 2020 PERA Related Legislation

Artie Pepin, Director, Administrative Office of the Courts, said in his capacity by statute he serves as staff to an entity called the Judicial Compensation Commission created by the legislature to make recommendations on judicial compensation. That body has understood its statutory directive to include retirement as a significant part of compensation. The Commission is required, not later than December 1st of every year, to report to the legislature on its recommendations. That was accomplished this year in September and those recommendations included legislation that was brought before the Investments and Pensions Oversight Committee (IPOC) on December 4th. IPOC endorsed three items of legislation suggested/recommended by the Judicial Compensation Commission.

Mr. Pepin said he was before the PERA Board today to request its endorsement of the three bills. The bills address the judicial and magistrate funds which make up about \$120 million and are the least funded funds at about 56 percent. Both funds are predicted to reach insolvency within the next couple of decades. The commission studied a number of proposals and the three bills are suggested for the 2020 session. He reviewed the bills as follow:

a. Docket Fees to General Fund

Mr. Pepin noted that the Board has supported this bill in the past. The bill has passed through both houses and was vetoed by former Governor Martinez. The docket fees currently have a portion going to the respective retirement funds. Over time, the fees lose ground when there is a judicial compensation increase because the fees are flat. The fees have brought in about \$3 million annually for the past decade. The problem is the fees are a declining percentage of the state's contribution to retirement because the costs goes up as judicial compensation is increased. "It is a slow moving, pernicious influence on a declining fund..." The fees contribute approximately 18.5 percent to the judicial retirement account and 13 percent to the magistrate fund. The statute regarding the docket fees basically decreases the state's contribution to the retirement funds each time the judges receive wage increases.

Mr. Pepin said currently the fees go to the general fund and an appropriation is made from the general fund of a percentage to the retirement funds. The state's statutory system basically decreases the state's contributions until the statute is changed.

Mr. Pepin said it doesn't immediately affect the challenges of the two funds; however, over time it is the right thing to do.

Ms. Armijo said she is familiar with the legislation and supports it 100 percent.

Ms. Naranjo Lopez said she cannot support the proposed legislation because it lacks

actuarial studies. Further, the bill should have been presented to the Board before presentation to IPOC. The plans' multipliers are too high and benefits are too high. She went on to say that IPOC approved the legislation without a quorum.

Ms. Naranjo Lopez said her recommendation to the legislature is to annually give \$200 million to PERA to seriously deal with the unfunded liability.

Vice Chair Melia urged Ms. Naranjo Lopez to stay on point with the agenda.

Responding to a question posed by Ms. French, Mr. Pepin stated that in 2015 the fees contributed \$2,466,505 to the JRA and \$402,932 to the MRA. In round figures, the docket fees provide \$3 million a year. The docket fees are considered a portion of the state's contribution and will be a fixed percentage of the employer's match. The proposed legislation says the docket fees should be added to the existing state contribution and those funds should be sent to the general fund. The employer's contribution will increase over time while the percentage remains the same.

The only impact the legislation can have is to stabilize contributions to the fund.

Ms. French asked PERA Executive Director Propst for his opinion/recommendation regarding the proposal. Mr. Propst responded that staff recommends that the Board endorse this legislation. The judicial and magistrate plans are the worst funded plans and while this will not have a significant impact on long-term solvency, the Board's actuaries recommend this bill because docket fees are not stable and not a means to fund a pension plan.

Mr. Eichenberg moved to support the proposed legislation regarding docket fees. Mr. Mayfield seconded.

Mr. Eichenberg requested a copy of the legislation and Mr. Pepin supplied copies. Mr. Pepin added that IPOC member Senator Candelaria is sponsoring the bill.

Ms. Naranjo Lopez asked why the bill did not come to the Board before IPOC and she requested email communications between anyone from the AOC and PERA staff regarding the proposal. She questioned the separation of the JRA and MRA from SB 72 when these plans contribute greatly to the unfunded liabilities.

Ms. Armijo said the solvency bill does not include either the magistrate or judicial funds. If it were included the Board would be discussing how to separate it out. The issues of the funded status are in a broad sense related but the subject matter is not.

Mr. Propst identified the magistrate, judicial, volunteer firefighters and legislative plans as being all separate sections of the statute.

In response to Ms. Naranjo Lopez's question of why this bill did not come to the PERA Board before IPOC, Mr. Propst said he does not control the Administrative Office of the Courts. Mr. Pepin said it was his call and if that was a bad call, he would be happy to come before the Board first in the future.

The motion to support legislation regarding the docket fees passed by majority voice vote with Ms. Naranjo Lopez casting the sole nay vote.

[The Board recessed from 10:45 a.m. to 11:00 a.m.]

Vice Chair Melia asked that the Board comments be germane to the agenda topic.

b. Legislative Retirement Funding Diversion

Mr. Pepin said the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act is for out-of-state oil and gas companies and generates tens of millions of dollars in revenue to the general fund. For a long time, \$2.4 million annually from that revenue stream was directed to the legislative retirement fund. Last year that was changed to \$900,000 because the legislative fund was 150 percent funded. In 2014, legislation directed that 50 percent of the \$2.4 million go to the judicial and magistrate retirement funds for a period of three years.

At the direction of the Compensation Commission, he requested that PERA determine the impact of a number of proposals regarding funding out of that revenue stream. The proposed legislation directs \$1.2 million or \$100,000 a month to each of the funds for a period five years. The legislative retirement fund will still be well funded with \$900,000 annually.

The impact of \$1.2 million in the judicial retirement fund improves its funding status by 30 percent after five years. The magistrate fund has a similar result with the additional money. Similar legislation was passed in 2014 but the governor vetoed it.

Mr. Propst advised the Board that all of the legislation under discussion can be found on the BoardPortal.

Mr. Mayfield moved to support the legislative retirement funding diversion as outlined by Mr. Pepin. Mr. Davis seconded.

Ms. Armijo said while she was unable to read the entire bill, she was very familiar with the subject. She pointed out that the money generated from the subject tax is deposited in the general fund. Stating she has no problem with the bill, she wanted it to be clear that this is general fund money and it is important it be understood as such.

Mr. Pepin agreed it is general fund money generated through tax revenue which is directed by statute to certain places.

Mr. Eichenberg asked what the Legislative Council Services' position on the bill is and Mr. Pepin said the bill has yet to be dropped. However, in 2014 LCS found no problem with the bill.

Mr. Propst said the legislative retirement fund is over 130 percent funded with a positive unfunded actuarial accrued liability of about \$12 million. If this legislation was adopted, the legislative retirement fund would continue to be over 100 percent funded at least for the next five years. He was cautious about extending the diversion longer than that.

Ms. Armijo asked how the diversion of these funds that would have otherwise gone into the overall PERA fund would affect the overall funded ratio. Mr. Propst said the impact to the larger PERA fund would not be measurable – it’s \$1.2 million in a multi-billion dollar fund. Ms. Pepin pointed out that the legislative retirement contribution has already been reduced to \$900,000 a year.

Ms. Armijo asked why contributions within the two funds were not increased. Mr. Pepin stated the solvency proposal under consideration includes an increase to both the employee and employer contributions. An influx of money from the general fund would be preferable to those increases.

Mr. Pepin said the Commission reviewed a number of scenarios and was disinclined to recommend an additional employee contributions because the elected officials already contribute 10.5 percent – the fourth highest contribution of judges in the nation yet the salaries are 47th in the nation. This is effectively a temporary increase in contributions from the state side. The bill is written as \$100,000 a month for 60 months.

Ms. Armijo said she’d like an assurance that at the end of five years, the AOC is not returning for an extension and rather increases their employee and employer contributions. She offered her support but added she “did not feel good about it.”

Ms. French asked whether benefit lowering was considered. Further, she could not support any reduction to the PERA fund because it is unfair to the other PERA members.

Ms. Naranjo Lopez said she will not support this legislation and understands that it has very little impact. Without a fiscal impact analysis and report from the actuary, she could not support the bill.

Ms. Armijo emphasized that this bill will not have a positive impact on PERA, in fact, it is marginally negative to the overall funded balance of the PERA fund.

Ms. Armijo called for the question and Mr. Davis seconded. The motion passed.

The motion to endorse the legislation passed by majority voice vote with Ms. French and Ms. Naranjo Lopez voting against.

c. Judicial and Magistrate Retirement General Fund Appropriation

Mr. Pepin said the bill asks the legislature to make a one-time appropriation to the funds to assist in reversing the status of insolvency to solvency. Various amounts were proposed for each of the funds based on answers received from PERA. The legislation uses \$32.5 million for judicial and \$14.5 million for magistrate.

There are 65 active magistrates and 191 retirees and inactives. The judicial has 124 active members, 26 inactive, 186 retirees for a total of 336.

Ms. Armijo recognized that the plans have a lot of retirees. She said the Board just approved a five-year plan and she was disinclined to support a lump sum infusion from the

general fund. She recommended keeping an eye on the funds and revisiting the request in the future.

Stating anything that increases solvency in a plan is good for the overall situation, Mr. Mayfield moved to support the general fund appropriation. Mr. Davis seconded.

Ms. Naranjo Lopez stated that without a cumulative variance report she cannot support the proposal.

Mr. Eichenberg recalled that last year a request was made at the legislature for a \$200 million general appropriation for PERA which failed. He said the Board had little influence and questioned why its endorsement was requested. Mr. Pepin responded that the Commission hoped that PERA would support legislation that addresses the insolvency of the fund.

Mr. Eichenberg asked about the quorum issue that Ms. Naranjo Lopez mentioned regarding IPOC. Mr. Pepin said the proposals were presented to IPOC before the PERA solvency plan was presented. He did not recall who on IPOC was present and believed there were more than five. IPOC did not ask him to return for a revote because of a quorum issue.

With a tie vote, the motion failed. [Mr. Davis was not present for this vote.]

Mr. Pepin assured the Board that he would not represent endorsement on this proposal.

2. Pre-Filed Legislation

a. SB 34 COLA Increases to Retired Law Enforcement

Mr. Propst said this bill was introduced by Senator Brandt. Currently, there are approximately 400 return-to-work law enforcement members not receiving a cost of living adjustment. In addition, SB 27 suspended the COLA for any retired PERA member who goes back to work for an ERB affiliate. Those are usually retired police officers that go back to work for schools as resource officers. This bill would reinstate the COLA for a retired PERA member who goes back to work for an ERB affiliate as a resource officer. The bill was introduced during the last session and the Board took no position. The bill passed the House and Senate and was pocket-vetoed by the governor.

Ms. French said legislators voted for the bill because they wanted qualified people protecting the schools. The COLA should come from ERB, not PERA. Ms. Armijo agreed and said she supports the officers at the schools but the COLA requires prefunding, otherwise it will impact the PERA fund.

Vice Chair Melia concurred with the previous speakers and said he could not support the bill.

Ms. Naranjo Lopez said this proposal should be remanded to the actuaries.

Mr. Eichenberg said he appreciates the legislation and what it is trying to accomplish. However, he agreed that ERB should pay for it. He asked if an amendment to the bill could be drafted making ERB responsible.

Mr. Propst said the Board could endorse it contingent upon an amendment requiring ERB to absorb any cost associated with it. Ms. Pittard suggested a funding source for PERA to address the cost of the COLA rather than tying it to ERB.

If the legislature backs this bill as good public policy, then the amount the COLA will cost could be calculated and the legislature could write PERA a check from the general fund to cover the cost, stated Ms. Armijo.

Mr. Propst said it is difficult to calculate the cost because ERB is the custodian of the records.

Commenting that this bill opens Pandora's box choosing which members receive a COLA and which don't, Ms. French moved to defer this item. Mr. Eichenberg seconded.

Mr. Propst observed that it has been Board practice to either endorse, oppose or remain neutral on a bill.

Ms. French withdrew her motion and introduced a motion to oppose SB 34. Ms. Armijo seconded and the motion passed by majority [10-1] voice vote with Mr. Mayfield voting against.

b. SB 60 Public Employees Board Changes

Mr. Propst reminded the Board that he reported on this reorganization of the PERA Board at its last meeting. The bill was pre-filed by Senator Muñoz. The current 12-member Board would be restructured effective 7/1/2020 with appointments as follows:

- One active member of a state general coverage plan to be appointed by the Personnel Board
- One active county member of a municipal general coverage plan to be appointed by New Mexico Association of Counties
- One active municipal member of a municipal general coverage plan to be appointed by the New Mexico Municipal League
- One public representative who is not a member and has skill, knowledge and experience in retirement investment products or retirement plan designs to be appointed by the Speaker of the House Of Representatives
- One public representative who is not a member and has skill, knowledge and experience in retirement investment products or retirement plan designs to be appointed by the President Pro Tempore of the Senate
- The Secretary of Finance and Administration; and
- Two retired members to be appointed by the organization that represents the retired members of the association, provided that at least one of the members shall be retired from a public safety coverage plan and at least one of the members shall have skill, knowledge and experience in financial matters.

All members will serve a four-year term and no member may serve more than two four-year terms. The bill requires geographic diversity around the state and the Board would appoint a chair and vice chair by majority vote.

Mr. Eichenberg said Senator Muñoz had called him and said he was advised by the Governor's Office that this bill would not be messaged as it was not germane to the 30-day session. Mr. Propst said he was not aware of that information.

Mr. Eichenberg moved to defer because there was no reason to take action. Ms. Armijo seconded.

For the record, Ms. Naranjo Lopez said this legislation takes the voice away from the membership.

The motion to defer passed without opposition. [See Page 14 for additional action on this item.]

c. SB 62 Public Employees Retirement Pay Changes

Mr. Propst said this bill has been pre-filed by Senator Muñoz and stems from a concept that was discussed by the Governor's Task Force. The bill addresses the treatment of certain overtime hours, particularly for police and fire members under the Fair Labor Standards Act (FLSA). Generally firefighters there are approximately six hours per pay period that members within those two plans are required to work; however, they do not receive PERA credit for that work and neither the employee nor employer pays contributions for those hours. The bill allows for those six hours to be pensionable wages for purposes of PERA with the required contributions.

The financial impact was included on the portal and demonstrates there is a fund impact. The funded ratio change for municipal police and municipal fire plans is small. However, it would increase the payroll for municipal police by \$10 million and fire by about \$9 million annually. There is an impact to the unfunded liability.

Mr. Propst said staff is recommending endorsement of the bill. The City of Albuquerque as well as the City of Santa Fe have requested PERA's assistance in passing this bill. Some years ago, there were questions as to whether under FLSA the hours should be seen as overtime and pensionable wages. The bill will clarify whether those hours are pensionable.

Ms. Pittard said this legislation would make an amendment to the definition of salary and the pertinent part would be "salaries shall not include overtime pay unless the overtime pay is required for a regular scheduled tour of duty as set forth in Section 207 (k) ... and is made on the regular payroll for the period represented by that payment. [Underlined text is new] She explained that because of the shift nature of law enforcement and fire protection the work week can exceed 40 hours.

Vice Chair Melia explained the situation further by stating as a firefighter, if he is required to show up for work, then he should receive credit and pay contributions for that time.

Ms. French said she understood a firefighter's pension is calculated on a 56-hour week making it already higher than most PERA members. She expressed concern about the "tour of duty" language because there are APD employees working in records and 911 operators that are

required to work extra duties. This is an equity problem.

Ms. Fisher agreed with Ms. French stating there are adult and juvenile correction officers who are also required to work overtime.

Mr. Propst said if certain correction officers are on FLSA schedule this bill will apply to them.

Ms. Pittard said the employer has to have adopted an FLSA schedule for its law enforcement or fire protection employee to be eligible for the provisions of this bill.

Ms. French said she wanted to be fair and equitable to the membership and requested additional information before acting on this bill.

Vice Chair Melia said under FLSA, management positions are classified differently.

Ms. Armijo said it was her opinion that the proposed legislation was fair and equitable and she would support it. In the future, she would like to discuss contributions for other employees that are required to work more than 40 hours a week.

Ms. Naranjo Lopez pointed out there was not an actuary present to provide an analysis of this bill. The firefighters' plan is one of the highest unfunded liabilities and this bill will give them more benefits than others. She recommended that the legislature pre-fund the bill and pointed out that task force was made up of a majority of public safety employees and they support this bill.

Mr. Mayfield moved to support SB 62 and Ms. Ragin seconded for discussion.

Ms. Ragin noted that FLSA has a special exclusion for firefighters based on schedules to receive the overtime pay.

Ms. French said she understood the firefighters' pension was based on a 66-hour week. Deputy Director Trujillo said firefighters are required to work 56 hours a week and are only able to receive PERA credit for 53.

There was mention of firefighters using vacation or sick leave for the 56 hour week that should be investigated.

Ms. French repeated that public safety were not the only employees forced to work overtime and she lobbied for more review.

Mr. Eichenberg said he has been texting with Senator Muñoz during this discussion and the senator has asked him to make a motion to oppose SB 60. Regarding SB 62, he asked who requested that the bill be drafted. Reviewing the bill drafts, Mr. Propst said he thought it was a governor's bill; however, the draft does not indicate that.

The motion to support the bill passed by majority [7-3] with Board members Naranjo Lopez, French and Fisher voting against.

Mr. Eichenberg introduced a motion to reconsider SB 60. Ms. French seconded. The motion passed without opposition.

Mr. Eichenberg moved to oppose SB 60 and Ms. French seconded. The motion passed by unanimous voice vote.

d. SB 71 PERA and ERB Employee Compensation

Mr. Neel recused himself from this discussion and vote.

SB 71 was pre-filed by Senator Muñoz. Mr. Propst said this bill is identical to a bill that he introduced last session. The bill would allow the ERB and PERA boards to establish compensation levels including additional compensation for investment staff. This bill was endorsed by the PERA Board last year. He questioned whether the bill would have much traction in the session but as it was pre-filed so he deemed it appropriate to be brought before the Board.

Ms. French moved to oppose SB 71. Mr. Eichenberg seconded.

Mr. Davis supported neutrality on this bill.

Ms. Armijo said she supported the bill last year; however, this year she will be opposing it. She said further discussions were necessary before she could support the bill.

Mr. Eichenberg said some of the assets realize gains in terms of five- and ten-year measurements. The bill allows for overperformance but fails to address negative performance.

Mr. Mayfield said he'd prefer neutrality or deferment on this bill.

The motion to oppose passed by majority [5-4] vote with Mr. Davis abstaining and Mr. Neel recusing himself.

e. SB 72 PERA Solvency

This bill was pre-filed by Senator Muñoz and is the Governor's PERA Pension Solvency legislation, an expansion of the recommendation from the Governor's Task Force, stated Mr. Propst. He reminded the Board that this bill was summarized at the last Board meeting and highlighted the following:

- The bill would increase contributions for active employees and their employers of 2 percent respectively, and a schedule to phase those increases in
- The contribution increase does not apply to state police and adult correction officers
- Employees with an annual income of \$25,000 or less are exempt from contribution increases
- In an attempt to address funded ratio disparities, the bill includes funding triggers
- Regarding the COLA, the bill would reduce the current seven-year wait period for the

first COLA, and would restore the two-year wait, and provide for three 2 percent non-compounding COLAs paid to eligible retirees for FY 21, 22 and 23; thereafter, a profit share COLA would be established for eligible retirees

- COLAs are increased for certain low-income and elderly retirees
- There would be a \$76 million general fund appropriation to cover the three years of a 13th check for retirees. That appropriation from the general fund is expected to reduce PERA's unfunded actuarial accrued liability by \$700 million
- The bill eliminates the cap on final average salary/pension maximum under all plans
- Tier 2 members' vesting period would be restored to five years for both public safety and non-public safety employees
- The suspended COLAs would be restored for all grandfathered return-to-work PERA members as well as all return-to-work members working for ERB affiliates
- Juvenile correctional and adult and juvenile probation and parole officers would be transferred into the state police and adult correctional plan 1

Mr. Propst referred to a baseline ALM [asset liability management] outlook document. He said there has been a considerable concern about PERA's cash flow. Currently, there is a negative 4 percent cash flow which is manageable. However, below that number is concerning in terms of sustaining the plan. With implementation of SB 72 and only reaching 6 percent return, opposed to the mandated 7.25 percent return, the system is still sustainable.

PERA's actuaries reviewed the bill and it was determined that had this bill been introduced in 2013, the fund's problems would have been fixed.

Mr. Mayfield said there are elements of the bill that he does not like but he understands that and was prepared to support the bill.

Ms. French asked how many additional changes the Governor has added to the bill since the Board reviewed it. Mr. Propst said the two-year delay in the contribution for municipal divisions, the reduction in the vesting period from eight years to five years, the increase in the COLA for members who are 75 or older, and the transfer of juvenile correctional probation parole officers into the state police and adult correctional officer plan 1 have been added.

Ms. French said the recent *La Voz* implied that the Board endorsed this bill and that's not the case since there are now changes. She noted that the transfer of employees from the state general did not make any sense to her. Mr. Propst clarified that the transfer would reduce the unfunded liability for state general plan 3 by \$40 million and does not increase the liability for the plan. He stated it was a matter of fairness and a request of AFSCME. The change does not damage the fund or affect cash flow.

Ms. French said this transfer should be prefunded and it was unfair. Those transferring have not been paying a contribution for a 20-year retirement. Ms. Pittard said this bill will not enhance or grandfather past service credit, it "blends" service credit accruals prospectively.

Ms. French said she had asked PERA's actuary if reducing the time to receive a COLA helped the fund and he said no. She said that makes sense except in recognizing who were the members of the solvency task force.

Ms. French said the reason she opposes the bill and will continue to oppose it is: 1) she did not believe there was anyone on the task force qualified to work on the plan, and 2) staff and the Board chair who participated on the task force did not discuss plan changes with the Board. She said, "It's a rush job by unqualified people."

Ms. Naranjo Lopez said she will not support the bill and the membership wants no changes to the COLA. The bill should go to the actuary and be taken to the membership before it is considered.

Mr. Davis recognized that the bill package is not perfect but he was willing to support it because it will help the pension fund. He noted that the 5 percent after the funded ratio is over 100 percent should be seen not as a COLA but a raise.

Mr. Neel agreed that the bill was not perfect. He said it was substantively similar to the plan Ms. Armijo presented last year. The bill takes the fund in the right direction and he will support it.

Ms. Ragin agreed it was not perfect but it was a step in the right direction and she would support it.

Ms. Naranjo Lopez stated that the representative from the NM Retiree Association has said that NM PERA has significantly underperformed and recommends a committee review the situation. The Governor's Solvency Task Force was overweight with public safety representatives which shows a relationship to the pre-filed legislation.

Mr. Propst identified state general, municipal fire and municipal police as the three divisions where the current statutory contribution rates are insufficient to ever pay off their portion of the unfunded liability.

Ms. French said it appears that the most underfunded plans are not being impacted any more than other plans and in fact, some appear less impacted. She also noted that once the plan is 100 percent funded the employer not the employee has a contribution reduction according to the bill.

Noting she was in the municipal plan which is 70 percent funded, Ms. French said she would not support shared risk as SB 27 did. The state should pay its share and the bill was not ready for implementation. If the Board supports this bill, Ms. French directed Mr. Propst to make sure the legislature is aware of the vote.

Ms. Fisher said this bill includes the COLA increases to law enforcement that was voted down by the Board in SB 34.

Ms. Armijo asked about the compounding COLA referred to in the profit sharing for COLA recipients. Ms. Pittard referred Ms. Armijo to Section 3, page 85 of the bill, and added that she has discussed with Legislative Council Services that the section needs clarification and inclusion of language regarding the amount of the increase and that all actuarial modeling had been done based on a compounding profit-share COLA.

Ms. Armijo said in the profit sharing COLA which will affect most of the people under this retirement plan, the language in the bill is incorrect. The information is that it is compounding, *La Voz* indicated that it was compounding and she trusts that it was to be compounding – but that was not included in the bill. She said staff should have advised the Board that an amendment to the bill was necessary. She trusted that Mr. Arencon has been contacted about the necessary revision.

Ms. Armijo said she supports the bill. A seven-year wait for a COLA was ridiculous and it pleased her that was changed. She appreciates the triggers in the bill and the 13th check with general fund money.

Mr. Mayfield moved to support SB 72 with the understanding that the risk share COLA is compounded: “the amount of the increase shall be determined by multiplying the amount of pension inclusive of all prior adjustments by ... and for those in the risk sharing it will be determined by excess investment returns.” [language in quotes provided by Ms. Armijo] Mr. Davis seconded.

Mr. Eichenberg asked legal counsel whether there was anything else in the bill that required an amendment. Ms. Pittard responded that she was unaware of any other amendments for the Governor’s intent to be incorporated in the bill.

Mr. Propst said Mr. Arencon is aware of amendment and the Legislative Council believes that they drafted the bill in a manner that incorporates compounding language.

Ms. French requested an amendment to eliminate restoring COLAs for return-to-work PERA retirees with ERB. Ms. Pittard said the bill restores the COLA to all retirees who returned to work before July 1, 2010 as well. Mr. Trujillo said there were 313 retirees this would affect and he estimated 80 were law enforcement working for ERB. Mr. Propst pointed out that Dr. Jenison, a DOH retiree who has contacted the Board, was affected by this issue.

Ms. French introduced an amendment that the bill is supported if “the PERA retirees that go back to work for an ERB affiliate do not receive a COLA.” [SB 34] Ms. Fisher seconded. [This amendment was withdrawn.]

Mr. Eichenberg pointed out that SB 34 was opposed because PERA does not want to pay that COLA; however, if ERB pays it, that is fine. He recommended that Mr. Propst advise the sponsor of PERA’s position regarding payment of the COLA. He then recommended that Ms. French withdraw her motion and let Mr. Propst handle it.

Ms. Armijo said she in general has a problem with not providing a COLA to retirees. Mr. Propst said he did not have a dollar figure for the return-to-work police officers at the schools but understood there were less than 50 and the 300 grandfathered in return-to-work retirees number is decreasing daily. The impact was probably not significant.

Ms. Armijo said the bill, with the compounding amendment to ensure it does what the governor wants, is important to support.

Ms. French withdrew her amendment.

The motion to support SB 72 with the amendment regarding the risk share COLA will be compounding passed by majority [8-3] with Members French, Fisher and Naranjo Lopez voting against.

f. SB 94 Retired Law Enforcement Returning to Work

Mr. Propst said this bill was pre-filed by Senator Clemente Sanchez and has been seen by the PERA Board many times in the past. It allows retired law enforcement officers to return to employment as law enforcement patrol officers under certain conditions; the employer and employee would make contributions and the COLA would be suspended.

Mr. Mayfield's motion to support SB 94 which died for lack of a second.

Vice Chair Melia moved to oppose SB 94 and Ms. French seconded. The motion passed by unanimous voice vote. [Ms. Fisher was not present for this action.]

6. Other Business

Ms. French requested that in the future PERA Board agendas include Public Comment.

7. Adjournment

Having completed the agenda and with no further business to come before the Board, Vice Chair Melia declared the meeting adjourned at 1:40 p.m.

Approved by:



John Melia
Vice Chair, PERA Board

ATTEST:



Wayne Propst, Executive Director

Exhibits attached

Exhibit 1: Agenda

Exhibit 2: Loretta Naranjo Lopez – Response to Agenda