

**MINUTES OF THE NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
RULES & ADMINISTRATION COMMITTEE MEETING**

June 14, 2016

This meeting of the Public Employees Retirement Board Rules & Administration Committee was called to order by Committee Chair Paula Fisher at approximately 1:00 p.m. on the above-cited date in the PERA Building, Senator Fabian Chavez, Jr. Board Room, 33 Plaza La Prensa, Santa Fe, New Mexico.

Roll was called by Executive Director Wayne Propst and a quorum was established as follows:

Members Present:

Paula Fisher, Chair
Jackie Kohlasch
Patricia French
Cathy Townes

Member(s) Excused:

Dan Esquibel, Vice Chair
John Melia

Other Member(s) Present:

James Maxon

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff-General Counsel
Greg Trujillo, Deputy Executive Director
Renada Peery-Galon, ASD Director
Karen Risku, Deputy General Counsel
Dana David, Assistant General Counsel
Misty Braswell, Assistant General Counsel
Natalie Cordova, Financial Manager
Jude Perez, Deputy CIO

2. APPROVAL OF AGENDA

Ms. French moved to approve the agenda as presented. Ms. Townes seconded and the motion passed by [4-0] voice vote.

3. **APPROVAL OF CONSENT AGENDA**

Chair Fisher said she reviewed the minutes and they were accurate.

Ms. French moved to approve the consent agenda. Ms. Kohlasch seconded and the motion passed by [4-0] voice vote.

4. **CURRENT BUSINESS**

A. **Inspection of Public Records Act (IPRA) Open Meetings Act (OMA) Training**

Dana David, Assistant General Counsel, said the IPRA and OMA are often referred to as the Sunshine Laws and the PERA Act requires the Board to comply with these acts which are important in informing citizens of the actions of government.

Referring to meetings, Mr. David said committees comprising less than a quorum of the Board that are delegated specific responsibilities by the Board are required to be conducted as open meetings. He reviewed the requirements established in the OMA that actions and discussions occur in open public meetings unless a specific exemption applies. He reviewed the public notice requirements. The OMA requires that the meetings be held in a public venue where the public has the opportunity to attend and listen.

Mr. David referred to the Board adopted Resolution 2016-01 establishing the requirements for OMA notice, posting of agendas, and recordation of minutes. He noted that no action may be taken on an item that has not been properly noticed in the agenda. Non-noticed issues may be discussed as “other business.”

Regarding exemptions for discussion in executive session, Mr. David said those that pertain to PERA include limited personnel matters, administrative adjudicated actions, pending or threatened litigation—attorney/client privilege, and opening sealed bids. The OMA requires that the Board keep and approve a record of all its meetings that include, among other things, the substance of proposals considered and any decisions or votes taken.

Mr. David emphasized that any action taken in violation of the OMA is invalid; further, any violation of the OMA is a misdemeanor. The advice of the General Counsel’s office: is when in doubt, notice the meeting because prevention is easy compared to the consequences of failure to comply with the law.

IPRA sets out that public records are presumed to be subject to disclosure unless subject to an exemption. Those exemptions include attorney/client privilege, confidential medical records, confidential personal information, trade secrets, and any other law in the State of New Mexico that establishes confidentiality in what would be a public record. New Mexico’s definition of a public record is very broad and includes any record in any form that relates to public business of a state agency or an element of local government.

Mr. David said IPRA defines the state's duty to disclose public documents. It is different from a discovery in a court of law. Documents that may be protected under IPRA are discoverable in the context of a lawsuit. IPRA makes a distinction between documents that relate to facts and documents that relate to opinions in the context of personnel matters. IPRA does not trump a legal process. He discussed the State's Trade Secrets Act which may apply to investment documents and how PERA handles claims of confidentiality as well as actions to enforce IPRA.

Mr. David provided a series of scenarios highlighting a rolling quorum. He noted that a committee can, without providing public notice, meet and engage in fact finding. A committee providing a recommendation to the Board is conducting public business and notice is required. He further noted that a document not within the custody of the agency does not make it a non-public record.

IPRA requests are not directed towards a person, only towards the agency custodian. As long as the agency disposes of records according to the Records Retention Policy and someone requests a record that has been legally disposed of, there is no duty to disclose it. However, if the record is retained beyond the policy timeline requirements and that document is available, the agency has the duty to disclose it.

Mr. David explained that if an email is sent to all the Board members that is canvassing the Board whether something should be an action item then it is not a violation of the OMA. On a practical level the Board has to have discussions to determine business. If there is discussion or deliberation on a matter that could be an action item, that could then be a violation. Again, best practice is to hold discussions within a properly noticed meeting. He asked that the consequences on the agency be considered, i.e., an investment decision rendered invalid because of a rolling quorum. The most prudent practice would be to limit emails to scheduling or agenda item suggestions and to notice all committee meetings.

Chair Fisher asked whether a subcommittee meeting that was not noticed and is solely conducting fact-finding business was within the parameters of law. Mr. David said that is okay and is specifically set out in the OMA compliance manual.

Susan Pittard, Chief of Staff-General Counsel, reminded the Committee that certain subcommittee meetings are noticed, i.e., evaluation committees.

B. Discussion of Board Policies & Procedures Review

Chair Fisher reported that a subcommittee met in a fact-finding capacity.

Ms. Pittard said the notice requirements for a subcommittee meeting are the same as all committees which is 72 hours. The notices are typically posted within the monthly meeting schedules. Posting for a meeting ensures its legality.

5. OTHER BUSINESS

Referring to last month's meeting, Chair Fisher asked whether there was additional information regarding employers who are not reporting on contracts with PERA retirees. Greg Trujillo, Deputy Executive Director, said the contract reporting requirement is provided at the employer training session as well as on the employer portal used for contribution reports. As far as policing, Mr. Trujillo said there is no audit process and the agency is making the employer aware of the requirements.

Chair Fisher noted that at a previous meeting, Mr. Esquibel recommended that contracts with PERA retirees should come before the Rules & Administration Committee as part of an approval process. Ms. French said that would be an onerous task for the Committee to tackle. She understood the ultimate goal was to determine which employers were not sending contracts to PERA for review.

Mr. Propst said the agency approved over 300 independent contracts last year. The review responsibility is appropriate for legal staff and the deputy director. He offered to provide information to the Board regarding PERA affiliates' contract reporting.

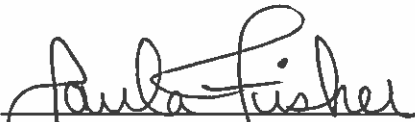
Ms. French requested that Mr. Propst include information on the number of contracts staff reviewed and which entities were involved. Mr. Propst said staff could provide general information in a useful format for the Board. He noted that staff has rejected contracts in the past

Mr. Trujillo said he anticipated the Board Portal would be active by the June Board meeting.

6. ADJOURNMENT

Having completed the agenda and with no further business to come before the Committee, Chair Fisher adjourned this meeting at approximately 1:55 p.m.

Approved by:



Paula Fisher, Chair
Rules & Administration Committee

ATTEST:



Wayne Propst, Executive Director