

NEW MEXICO
PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION
AUDIT & BUDGET COMMITTEE MEETING
May 11, 2021

This meeting of the Public Employees' Retirement Association Audit & Budget Committee was held on the date cited above via Zoom tele/videoconferencing. Diana Rosales Ortiz, Chair, called the meeting to order at approximately 9:06 a.m.

1. Roll Call

Trish Winter, Executive Assistant, undertook the roll call. Meeting attendance met quorum with the following members present:

Committee Members Present

Diana Rosales Ortiz, Chair
Loretta Naranjo Lopez
David Roybal (*at 9:10 a.m.*)
Francis Page (*appointed*)

Committee Members Absent

Lawrence Davis, Vice-Chair
John Melia

Other Board Members Present

Shirley Ragin
Paula Fisher (*at 9:10 am*)

Staff

Greg Trujillo, Acting Executive Director
Susan Pittard, General Counsel
Trish Winter, Executive Assistant
Anna Williams, CFO
Misty Schoeppner, Deputy General Counsel
Kristin Varela, Deputy CIO
LeAnne Larranaga Ruffy, Co-Head of Equity
Karyn Lujan, SmartSave Plan Manager

2. Approval of Agenda

A motion to approve the agenda was made by Mr. Page and seconded by Ms. Naranjo Lopez. The motion to approve the agenda passed by roll call vote as follows:

Diana Rosales Ortiz	Yes
Loretta Naranjo Lopez	Yes
Francis Page	Yes

3. New Business

A. Review of State Auditor Recommendations

[Exhibit 1: Review of State Auditor Recommendations]

Ms. Williams advised she would present the OSA recommendations based on their review dated May 7th, 2019, and the GOA memo dated May 17th, 2019.

Referring to the letter from OSA, Ms. Williams said OSA noted that due to inconsistencies within the structure of optical statutes, administrative code rules, and Board policy and procedures, that the Board should take immediate action to provide clear alignment between Board policies and procedures and applicable legal authority.

Ms. Williams said OSA recommended that the PERA Board clarify either the administrative code or their current Board policies and procedures to clearly define what the duties and responsibilities of the Executive Director are. She noted that another recommendation on the same page of the memo was that PERA statutes did not contain a definition of the Chief Administrative Officer and that without a definition one is left to interpret what duties and responsibilities that the CAO is tasked with. As such, OSA's observation was that PERA's administrative code did not contain a definition of proper delegation and whether that equates to written and document delegation or if verbal delegation is allowable.

Ms. Williams said OSA recommended that the PERA Board clarify either their administrative Code or their current Board policies and procedures to clearly define what the process is for pay increases for the Executive Director and whether the full Board approval would be required in future letters to the DFA Cabinet Secretary.

Ms. Williams advised the Committee this she had presented the highlights of the OSA recommendations and noted that several observations were included in both the letter and the memo.

Ms. Naranjo Lopez made a statement that she did not agree with the Office of State Auditor. She thought the article that came out of the journal that said, "the fishing buddy", and that she thought that explained all.

Responding, Chair Rosales Ortiz thanked Ms. Naranjo Lopez for her comments and said the agenda item was a memo that was issued to the PERA Board and organization that was what was open for discussion at that moment. She noted that they were trying to solve issues with apparent incongruences and inconsistencies administratively, and in policies and procedures, and administratively. She said if there were no questions about the items addressed in the recommendations, they would move forward.

Ms. Naranjo Lopez asked for an explanation of what specifically was being asked of PERA staff from the recommendations provided by the New Mexico State Auditor so they could be clear on follow-through with staff.

Responding, Mr. Trujillo said this was not an action item, it had been placed on the Committee's Agenda to ensure new Board members were aware of the Attorney General and State Auditor's 2019 findings, and refresh existing Board members of these. As such, he said there was no intention to take action on any of the informational items at the meeting.

Ms. Naranjo Lopez asked what, if any, follow-up from PERA staff had occurred following the findings of the Attorney General and State Auditor's Office.

Responding, Mr. Trujillo said the approach taken by staff to address the recommendations from the State Auditor's Office was the development of a draft Executive Director Resolution, which he believed was in the current meeting packet. He said this document worked through the Committee process in 2020 and could serve as a template for the Committee to amend. He said the draft had been taken to the full Board for a vote, but that he did not believe any action was ever taken on it.

Mr. Page noted that over the next few months he would be asking all committees to review their respective rules and policies, and also the charter. He suggested the Resolution could be included as part of that review.

Responding, Chair Rosales said she thought it was important to continue reviewing and revising policies and procedures to ensure any conflicts between what is written and how things were being done are eliminated. She said that would help resolve many communication issues and needed to be done.

B. Review of Office of the Attorney General Recommendations

[Exhibit 2: Review of Office of the Attorney General Recommendations]

Ms. Pittard suggested before discussion it would be helpful for the Board to reacquaint themselves with the changes that were made Section 10 of the Board Policies and Procedures regarding Executive Director delegation, the Board's obligation regarding performance reviews and compensation for the Executive Director, and the current administrative rule 1800 regarding the Executive Director and rulemaking. She advised that the Board needs to make decisions about how they want to clarify these competing documents. She said that in 2020, much of the efforts of the Rules Committee were an attempt to do this through a resolution to be adopted by the Board, and this failed. She said she thought that a starting point would be to look at the Board Policies and Procedures at Section 10 and then make a decision as to how the Board wants to execute the compliance, whether it be through an administrative rule or a resolution.

Chair Rosales Ortiz reminded the Committee the documents as Ms. Pittard mentioned, are issues that they need to constantly work on. She encouraged the Board to become familiar with the documents so they could agree on what they would work on.

Referring to the Attorney General's review and recommendations contained in their letter dated September 26, 2019, Ms. Williams noted a lot of the recommendations from the Attorney General were similar to the OSA's.

In summarizing three of the Attorney General's recommendations, Ms. Williams again stated this was an informational item to ensure that new Board members were aware of the previous recommendations, and refresh the information for continuing Board members.

Ms. Williams said the first recommendation made by the Attorney General was that PERA should take immediate action or immediate steps to resolve the conflicts of interest between applicable state, statutes, rules, and policies. She said their second recommendation was that PERA should have a proper delegation to the Executive Director, described by rule rather than policy, to properly resolve these conflicts through a rulemaking process to lawfully facilitate input from both the public and all Board members. She noted this corresponded with Ms. Pittard's previous comments on rulemaking.

C. Overview of Governance Audit Recommendations/Findings

[Exhibit 3: Overview of Governance Audit Recommendations/Findings]

Ms. Williams advised that REDW Governance Report released on May 20th, 2020 following an internal audit included several recommendations.

Regarding REDW's recommendation on communication, Ms. Williams noted it stated the Board should work to develop a long-term strategic vision for the agency, and all decisions should adhere to that vision. She said the report recommended the Board should collaborate with management to develop performance metrics to which success is measured against management. She said the report recommended that management should be responsible for the execution of the vision and action steps, with the Board being the oversight function.

Ms. Williams said the next REDW recommendation on Board communication was that once a majority vote was made, procedures should be put in place to ensure the Board accepts the vote and a unified approach is taken for all subsequent communication. She said the report recommended that a process should be implemented to address situations that arise when Board members do not comply and that while it was not expected for all Board members to agree unanimously on every decision, that it was critical that for all Board members to acknowledge and accept the majority vote, and ultimately support the Board in its decision for PERA membership.

Regarding REDW's third recommendation on communication, Ms. Williams said this was that while all Board members are required to sign that they acknowledge Board policies and procedures, there did not appear to be any process in place to identify and resolve noncompliance. She said the report recommended that PERA should consider implementing an oversight committee to monitor compliance with Board policies and procedures and that repeated issues of non-compliance should be addressed and evaluated to determine appropriate action steps, such as sanction of Board members or removal. The report also recommended that the process would need to be consistently followed and monitored.

Regarding REDW's third recommendation on communication, Ms. Williams said this was that in the event Board members purposely walk out of a Board meeting to prevent business from moving forward, disciplinary actions in accordance with Board Policy Section 9.3 should occur.

Ms. Williams said the last REDW recommendation related to communication was that PERA should consider implementing a formal complaint process for Board members and management and that this should be similar to the one developed for member beneficiary complaints in Board Policy Section 2.82. She said the report stated this would allow members and management to express their concerns in a formalized manner and provide more open collaboration and a form of communication regarding concerns or complaints. She said the report recommended that these complaints be submitted to the Board Chair and that they must contain documentation to support the complaint prior to the submission, with the Board Chair to determine if the complaint would move forward to the full Board or designated Committee based on the information received. She said the report recommended that in the event a complaint was not properly addressed, procedures should be in place to escalate the complaint to OSA or another oversight agency.

On PERA's response to REDW's recommendations on communication, Ms. William's said management responded they were available to assist the Board. She said the Board's response to these recommendations was they agreed that they needed to establish a unified vision and develop a process to ensure good communication and decision-making.

Ms. Williams presented REDW's next recommendations on nonfinancial conflict of interest reporting. She said REDW had stated that section 3.3 of the Board Policy provided a good initial oversight function related to nonfinancial conflicts, and had made recommendations for PERA to consider in the process.

Regarding REDW's recommendations for nonfinancial conflict of interest reporting, Ms. Williams said these included the development of a nonfinancial conflict of interest form to assist Board members in properly disclosing employment, union affiliation, or any other organization or association affiliations. The report recommended putting into practice the requirements under Board Policy section 3.3, that is that Board members disclose their employment, union affiliations, or any other organization or association affiliations to the Executive Director annually via the nonfinancial conflict of interest form and that the Executive Director must make this information available at the next Board meeting. She said the report also recommended the establishment of a method to monitor conflicts of interest that may arise during the year in addition to an annual process to ensure they are addressed timely. She said this part of the REDW also recommended that Standards of Conduct training be provided to Board members on annual basis and that the importance of the complement of Board Policies and Procedures including acknowledgment of adhering to the Standard of Conduct be stressed.

Ms. Williams said the last recommendation concerning conflicts of interest reporting was the Board should consider tasking the Rules and Administration Committee with enforcing the PERA Standard of Conduct during the Board and Committee meetings, as well as during their interactions with PERA membership and the general public. She said the report also recommended the Committee be responsible for monitoring Board member compliance with Standards of Conduct and reporting on exceptions periodically.

In PERA's response to REDW's recommendations for conflict of interest reporting, Ms. Williams said that management agreed the development of a nonfinancial conflict of interest form could assist Board members to accurately disclose potential or perceived conflicts and they would work with the Board in the development and education around this form. She said the Board responded they agreed enhancement could be made to the nonfinancial conflict of interest in policy, and they would work with management to implement the process.

Ms. Naranjo Lopez asked whether this process was necessary given that Board members already are required to file a financial report with the state annually or every six months, and that she was concerned this was repeating the process. She said she thought the Board should also be educated as to the meaning of a conflict of interest in terms of money or finances received directly and personally by individuals personally, and which as they already have to report to the state, she would have an issue with having to report it again. She said she recalled a discussion at a previous meeting around possible conflict of interest with AFSCME and RPENM, but as they are members of New Mexico PERA there was not a conflict of interest. She also asked if REDW knew of Board members' requirements to declare gifts and so forth through the state.

Responding, Ms. Williams said that REDW was aware of Board members reporting requirements to the state. She said they had some good initial oversight over nonfinancial conflicts, and they wanted to have management and the Board expand the conflict of interest forms to ensure they were completed properly. She said they understood that PERA did have them, but that they saw it as a high risk, and they wanted some more transparency regarding reporting conflicts of interest and ensuring that there was not a negative impact to the public and PERA.

Ms. Naranjo Lopez said she did not think people understand conflicts of interest, and recommended that the Board, particularly new Board members, be given an explanation of conflicts of interest by someone other than staff, such as from the Attorney General's office, at the next Board retreat or Board meeting.

Chair Rosales Ortiz thanked Ms. Naranjo Lopez for her suggestion. She asked Ms. Williams and Mr. Trujillo whether, along similar lines, PERA staff were also required to also complete the conflict of interest or disclosure forms for the Secretary of State.

Responding, Ms. Williams said the exempt employees are required to complete a conflict of interest form. Mr. Trujillo added that all employees must abide by the Governor's Code of Conduct, and there are several disclosures that PERA staff complete. He advised that following a recommendation from a prior internal audit, all PERA staff are also required to disclose on an annual basis any relative that is part of the PERA system.

Chair Rosales Ortiz thanked Mr. Trujillo and Ms. Williams for their responses and said because of this she had wanted to check and confirm PERA staff's requirements. She suggested that they needed to look at risks, and procedures for all staff members. She commented that conflict of interest may not only relate items with monetary value and whether it would apply things such as the elections process, contractors, and vendors. She said she thought there was room for further evaluation.

Mr. Trujillo advised that he thought Ms. Pittard could expand on this area as well.

Ms. Pittard said she would respond to a few points mentioned. Firstly, she noted that the item under discussion was nonfinancial conflicts of interest. She said that it was not true that there needs to be a financial gain for there to be an actual conflict of interest. She said that PERA staff agree the Board needs further education on this matter. She commented that she did not think the Attorney General's Office necessarily could help with this for pension fund trustees, that they can help with issues regarding the Governmental Conduct Act. She said staff is currently working with the Chair to schedule educational opportunities for the remainder of the calendar year, and she thought nonfinancial conflicts of interest should be one of them. She said staff would be happy to work with the Chair should the Committee like to move forward with the nonfinancial conflict of interest forms.

Chair Rosales Ortiz thanked Ms. Pittard and agreed that they needed to ensure there were both financial and nonfinancial conflicts of interest reported.

Presenting on REDW's third recommendation on the annual evaluation of the Board, Ms. Williams said they had recommended that PERA should implement a process to conduct a formal self-evaluation annually to ensure compliance with Board Policy Section 2.0. She said they recommended this be performed at the Board retreat, and that all Board members should be required to participate to ensure all voices are heard. She said the recommendation also included that the Board should consider identifying a facilitator for this process to help make this evaluation effective and helpful for PERA.

On PERA's response to REDW's recommendations for the annual evaluation of the Board, Ms. Williams said the Board had agreed that this needed to occur would conduct one by the end of FY21. She noted as this was related to the Board only there was no staff response.

Chair Rosales Ortiz said she thought this recommendation was interesting given there was a heated conversation at the last Board meeting. She asked how this could be overcome and how they would undertake a self-evaluation process between Board members. For example, whether it would be from staff to Board members, or Board members to Board members, and whether the internal auditor had provided a template of general issues to self-evaluate.

Responding, Ms. Williams referred to the Board Policies where it is stated that the Board is to evaluate their performance annually at a retreat and take steps necessary to improve Board operations. She suggested, as recommended by REDW, that the Board consider engaging an independent outside party to facilitate the self-evaluation so that all members' voices are heard, and the self-evaluation is effective.

Mr. Trujillo responded that there were a couple of ways a self-evaluation could be done and that it's not an evaluation by the staff of the Board, but the Board self-evaluating their own effectiveness. He said that Boards generally do a 360 self-evaluation, which is not personal towards Board members but looks at how the Board functions as a whole and evaluates the progress being made on accomplishing the mission of the fund or the organization. He said that bringing in a facilitator to help the Board conduct such a process is, what he believed the internal auditors were recommending. He said that they had had initial conversations with Chair Page so the Board can begin that process.

Chair Rosales Ortiz agreed and asked Mr. Trujillo to provide further explanation and detail of what a 360 process was, who would be involved, and how it would work.

Responding, Mr. Trujillo said ideally they would target a contractor or a vendor that specializes in undertaking these kinds of evaluations for Boards similar to PERA. He said they would identify a vendor for approval, and then would start that process with the Board.

Presenting on REDW's fifth recommendation, Ms. Williams noted this was that an annual evaluation of the Executive Director should be undertaken. She said the report recommended that the Board implement a process to ensure the Executive Director evaluation is performed annually and any action items developed during the evaluation are regularly monitored. She said they recommended the Board consider conducting a 360-evaluation process to incorporate feedback from all levels of the organization.

On the PERA Board's response to the recommendation for the annual evaluation of the Executive Director, Ms. Williams said the Board agreed this needed to occur and one would be conducted by the end of FY 2021.

Mr. Page advised that part of his current planning included an evaluation of the Acting Executive Director for the period covered until a permanent Executive Director is chosen. He said after that, an annual evaluation of the new Executive Director would be scheduled every year, probably in June or July.

Presenting on REDW's next recommendation on gift reporting, Ms. Williams, noted the Board Policy requires that at least semi-annually Board members, the Executive Director, and Executive Staff disclose anything of value received in their capacity as a PERA Board Member via the PERA Gift Reporting Form. She said REDW had noted that some Board members were not completing these forms and recommended PERA implement an independent review of the Gift Reporting Form for compliance purposes by designating an appropriate individual from management to review and sign off the forms to ensure any potential issues are addressed and that this would also aid in ensuring that statutory reporting requirements are met. She also said that the report noted that PERA Board Policy section 3.53 states that reporting shall be filed immediately following the six months covered by the report, and that they recommended that the Board Policies be updated to better define the timing of when reports are to be filed so the deadline was clearer.

On the PERA responses to the recommendations for gift reporting, Ms. Williams said management agreed with an independent review of this and they would assist Board members to comply with reporting requirements. She said the Board response agreed with the observation and that they would add informational agenda items to inform Board members who have yet to submit their gift reporting forms that are due.

Presenting on REDW's seventh recommendation on external education reporting, Ms. Williams, noted that in accordance with Board Policy Section 7.110 each Board member shall report to the Board on any event requiring travel outside of New Mexico. She said the report noted several occasions where it had been on the agenda for Board members to report education, however, they did give their reports. She said

the REDW recommendation was that PERA should implement a process to ensure Board members are reporting on state education and travel within a 60-day requirement and that since Board member meetings are typically full, PERA should consider implementing a questionnaire for Board members to complete prior to the meeting for inclusion in the Board packet for Board member review for information purposes only.

On the PERA responses to the recommendations for external education reporting, Ms. Williams said management suggested that in-person reports were not practical within existing deadlines and that Board members should be allowed to provide a written report for the record. She said the Board responded that they agreed with this observational and they would update the Board Policies to convert external education reporting into written processes to be included in the Board packets.

Presenting on REDW's eighth recommendation on education affidavits, Ms. Williams noted that it was a statutory requirement that all Board members shall annually certify his or her compliance. She said the REDW report noted that some Board members had not certified their education compliance, and they recommended that PERA should implement a process to ensure all education affidavits are certified prior to the deadline of December 31st. She said they also recommended that an internal review should be formed on each form submitted to ensure Board members are receiving the amount of education in compliance with training requirements.

On the PERA responses to the recommendations for education affidavits, Ms. Williams said that management's response was they would provide monthly reminders during the fourth quarter of the calendar year to track Board member compliance. She said the Board response was that they agreed with the observation, and would add an informational agenda item to inform Board members who have yet to submit their education affidavits.

Presenting on REDW's ninth recommendation on process improvements, Ms. Williams noted this was concerning Board education costs. She said Board education costs were reviewed by REDW they determined that PERA was tracking Board education costs on a fiscal year basis to align with the agency's budget processes, but that this tracking should be done on a calendar year basis to conform with statutory requirements of certified compliance on December 31st, as mentioned in the previous item. She said the report recommended that the Board should consider updating policies and procedures to align with the New Mexico code section of tracking education costs on a calendar basis.

Chair Rosales Ortiz said that, as addressed earlier by Ms. Pittard, and within the recommendations presented that there is a conflict between administrative code and policies and procedures that needs revision. She noted that it is a work in progress, that steps have already been taken, and staff is currently ensuring all Board members are up to speed with that so the Audit Committee and full Board could continue reevaluating, assessing, and moving forward.

Chair Rosales Ortiz thanked Mr. Page and said it seemed like there was a lack of continuity with new Board members coming in and wanting to start over again when it should not be that way. She said they should keep moving forward. She noted with she was not sure how much progress had been made since the 2019 internal audit recommendations were issued, but that was why they were here, and they should keep moving forward with the work to be done.

Ms. Williams mentioned that REDW does undertake follow-ups on the Governance Audit. She noted that they would be following up over the next two months on outstanding observations to address what had been completed, and what is still outstanding, and would present that to the Board.

4. Adjournment

Having completed the agenda, Chair Rosales Ortiz declared the meeting adjourned at 9:55 a.m.

Approved by:

Diana Rosales Ortiz, Chair
PERA Audit & Budget Committee

ATTEST:

A handwritten signature in black ink, appearing to be 'G. Trujillo', written over a horizontal line.

Greg Trujillo, Acting Executive Director

Attached Exhibit(s):

[Exhibit 1: Review of State Auditor Recommendations]

[Exhibit 2: Review of Office of the Attorney General Recommendations]

[Exhibit 3: Overview of Governance Audit Recommendations/Findings]