

**New Mexico
Public Employees Retirement Association
Rules and Administration Committee
September 14, 2021**

1. Call to Order

This meeting of the New Mexico PERA Rules and Administration Committee was held on the date cited above via Zoom tele/video conferencing. Chair Paula Fisher called the meeting to order at approximately 10.40 a.m.

2. Roll Call.

The meeting attendance met quorum with the following members present;

Board Members Present

Paula Fisher, Committee Chair
Diana Rosales Ortiz
Shirley Ragin
Roberto Ramirez

Board Members Absent

Steve Neel

Other Board Members Present

Loretta Naranjo Lopez
Francis Page
Lawrence Davis @ 11:01am

Staff

Greg Trujillo, Acting Executive Director
Trish Winter, Executive Assistant
Anna Williams, CFO
Kristin Varela, Interim CIO
Misty Schoeppner, Deputy General Counsel
Karyn Lujan, SmartSave Plan Manager
Jessica Trujillo, HR Manager
Geraldine Garduno, Assistant General Counsel
Sarah Hume, Investments

Others in Attendance

Patricia French
Kevin Balaod, Journalist PageantMedia

3. Approval of Agenda.

Shirley Ragin moved to approve the agenda. Diana Rosales Ortiz seconded the motion. The motion passed by a unanimous roll call vote as follows;

Paula Fisher Yes

Diana Rosales Ortiz Yes
Shirley Ragin Yes
Roberto Ramirez Yes

4. Approval of Consent Agenda

Chair Fisher stated that she had reviewed the Minutes of June 8, 2021, and they appeared to be in order.

Roberto Ramirez moved to approve the Consent Agenda. Shirley Ragin seconded the motion. The motion passed by a unanimous roll call vote as follows;

Paula Fisher Yes
Diana Rosales Ortiz Yes
Shirley Ragin Yes
Roberto Ramirez Yes

5. Unfinished Business

A. Proposed Rulemaking Update

Geraldine Garduno, Assistant General Counsel, reported that on June 8, 2021, the Rules & Administration Committee took action to approve the process of rulemaking and the timeline, including which rules were proposed for amendment.

At the August 26, 2021 Board meeting, the Board took action to approve the notice of the proposed rulemaking. In that notice, the public was informed of the anticipated changes, as well as how they can obtain copies of the changes or submit comments and participate in the rule-making hearing, scheduled for November 9, 2021.

The notice and the proposed revisions need to be submitted to the State Records and Archives on Thursday this week to be published in the New Mexico register on September 28.

The notice and proposed changes will also be published on the Sunshine Portal, on PERA's website, and will be posted at the agency offices in Santa Fe and Albuquerque. In addition, a user-friendly flow chart will be posted on the website to describe the rulemaking process for the members.

The public may comment on the rulemaking in person or via Zoom during the hearing on November 9. They can also submit their comments before the hearing day. New rules will be adopted by the Board and published in December.

Ms. Naranjo Lopez stated the entire policies and procedures should be removed and reevaluated because the law firm, Reed Smith, had been using them to rob and deprive the PERA Board. She also felt that the executive director and staff had been given too much authority. She proposed halting the process so that the process can be redone.

Chair Fisher pointed out that the process was initiated in June and she had been among the Committee members who proposed moving it forward so that concerns can be addressed and the Board can have more clarity. She also stated that Ms. Naranjo Lopez had been in that meeting and wondered if her current concerns were the same she raised back then.

Ms. Naranjo Lopez stated she had been raising her concerns the whole time. She reiterated that the process needs to be halted so it can be thoroughly evaluated.

Chair Fisher asked if Ms. Naranjo Lopez had any proof for calling the law firm criminals. Ms. Naranjo Lopez stated that she had the actions of Reed Smith on record.

Ms. Rosales Ortiz thanked Ms. Garduno for creating the rule-making chart. She further stated that she felt responsible for raising the issue of resolutions. She suggested an amendment of step number one and apologized for not sending it in earlier. Her suggestion was to add the resolutions reviewed by the Board in January.

Ms. Rosales Ortiz also recognized that Board members had until September 16 to review the rules and make proposals. She also acknowledged Ms. Naranjo Lopez's concerns and asked if it was possible to continue making changes as the process moves forwards or if it was better to wait until January.

In response, Ms. Garduno reiterated that the deadline for submission to the New Mexico Register was September 16 so the publication can be made on September 28. Failure to provide the draft revisions by that date would prompt legal scrutiny and challenges from outside parties as it would be deemed that the Board was not providing appropriate notice to the public.

Ms. Garduno noted that the deadline had already been pushed back once and now the deadline was coming up. She explained that by statute, a 30-day notice had to be provided before the rulemaking hearing. Some time is also needed to make changes based on comments received at the hearing. The rules then need to be resubmitted to State records and Archives so that everything can go into effect by December. Her recommendation was to not push the process further.

She gave the option of pulling out rules from the Notice, that the Board did not intend to revise. Ms. Rosales Ortiz agreed that part of the Board's fiduciary duties is to go forward with the rule-making process otherwise, they could be open for litigation.

Mr. Page stated that most of the changes were due to the bills that came out this year. They are also due to other findings that were submitted for correction. He also reiterated that the process began about four months ago and therefore the members had time to review the rules.

Ms. Garduno requested that additional changes be submitted by 9.00 am on September 16, 2021 so that she has enough time to make required changes.

Ms. Naranjo Lopez stated that one change would be to take out the rules, policies, and procedures adopted as those were not necessary. They need reevaluation. She was also concerned about any language that allowed the executive director to do anything without Board approval.

Chair Fisher proposed going through the rules at this meeting so that potential questions can be addressed and possible recommendations and changes can be made.

Ms. Ragin pointed out that since the rules will still be presented to the full Board, the Rules Committee could decide to move it forward. The full Board will then have a chance to provide their opinions and vote. Chair Fisher agreed and added that this is informational and the Committee can

make changes or recommendations to Ms. Garduno, who would then consider those before submitting for publication.

Ms. Rosales Ortiz echoed Ms. Ragin's comments and thanked her for that reminder. She also addressed one of the concerns raised and stated that she had been working on some governance issues diligently through the Audit and Budget Committee. She stated that she had invested a lot of time ensuring that rules are followed to protect the fund and the Board's fiduciary duties. She emphasized that the process had been lengthy and tedious, not one where they just woke up and decided to make up rules.

Ms. Naranjo Lopez appreciated Ms. Rosales Ortiz for her hard work on the process. She also reiterated that the Board had been held hostage by staff and that the Board's authority had been taken away. Her suggestion was to ensure that the Board's authority is established and that the statute is being followed. She also pointed out a rule under salary where changes were being made to allow a certain group to have more benefits.

Chair Fisher reiterated that the Board would go over the rules and have the chance to vote.

Mr. Page pointed out that the rule on salary changes that Ms. Naranjo Lopez had brought up is by statute which had been decided by Legislature and signed by the Governor. The Board's role was to follow the rule in the statute.

Ms. Garduno overviewed the rules as follows;

Rule 100 is the definitional rule. The primary changes here are to comply with statutory and legislative changes that happened in the most recent legislative sessions. Definitions added are for adult probation and parole officer member, and juvenile probation and parole officer member. The numbering of the paragraphs will be changed to add those definitions.

The proposed changes also revise the definition of salary to include overtime paid to certain state public safety members, which is consistent with the Fair Labor Standards Act.

Rule 200 has two revisions in two different sections. Under Section 200.50, under Committees, the proposed change would create a Standing Governance Committee for PERA. This has been recommended by PERA's auditors, the rule would add the standing governance committee as well as be reformatted.

Section 200.80, electronic signatures on nominating petitions, the proposed changes would allow both the use of electronic signatures on nominating petitions, as well as electronic submissions of nominating petitions.

Ms. Rosales Ortiz stated that this rule will facilitate for many members throughout the State to submit their signatures if they decide to serve on the Board.

Rule 1800, executive director regulation. These regulations are driven by a recommendation made by both the Office of Attorney General and the State Auditor concerning what authority the executive director needs to have, as well as formal delineation of that authority.

Ms. Garduno reiterated that any changes to this regulation should be submitted to her before September 16, 2021. She further stated that the rule does not expand the executive director's authority. It merely specifies what authority he has now and what specifically he answers to the Board on.

Chair Fisher inquired if reformatting the rule as necessary will mean continuous changes can be made moving forward. Ms. Garduno explained that substantive changes cannot be made, but those will depend on the comments received at the hearing. Comments received at the hearing can be addressed and the rule changed before its acceptance by the Board at a later meeting.

Rule 2100. Changes to this rule are to allow for representatives of deceased PERA members to submit a notarized affidavit to receive a 1099-R form for the purpose of filing taxes for the deceased member.

The rule will facilitate the process for members so they know that they can submit an affidavit indicating that they are a representative of the estate and they would like to file taxes for the estate. That will be processed through the legal division.

The Committee members confirmed that they were satisfied with the information.

Ms. Rosales Ortiz appreciated staff's work on the rules. She added that they were findings from the Office State Auditor, the Attorney General's office, and internal and external auditors. She also stated that this concludes some transparency and governance issues for both the Board and the duties of the executive director.

6. New Business

A. Updated Rules & Administration Committee Charter

Chair Fisher stated that the Charter consists of the Committee's purpose, meetings, and objective.

With regards to the Charter, the Committee provides advisory assistance to the Board in PERA management regarding development review and update of PERA regulations, and as required, conduct administrative rulemakings.

Section 4 has the authority and ethics added in, stating that the Committee shall carry out their duties with the highest level of honesty and integrity, act in the interest of the PERA membership, maintain an open avenue of communication with management, staff, and the full Board, and maintain confidentiality and protect the ownership of confidential information. Chair Fisher expressed her full agreement with this.

Diana Rosales Ortiz moved to approve the Rules and Administration Committee Charter. Roberto Ramirez seconded the motion. The motion passed by a unanimous roll call vote as follows;

Paula Fisher	Yes
Diana Rosales Ortiz	Yes
Shirley Ragin	Yes
Roberto Ramirez	Yes

7. **Adjournment.**

With no further business to discuss, Chair Fisher adjourned the meeting at approximately 11.22 AM.

Approved by:

Paula Fisher, Rules & Administration Committee Chair

ATTEST:

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

Greg Trujillo, Executive Director