

NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
BOARD MEETING
December 10, 2019

1. This monthly meeting of the Public Employees Retirement Board was called to order by John Melia, Vice Chair, at approximately 10:20 a.m. on the above-cited date in the Senator Fabian Chavez, Jr. Board Room, at the PERA Building, 33 Plaza la Prensa, Santa Fe, New Mexico.

2. Roll call indicated a quorum with the following members present:

Members Present:

John Melia - Municipal, Vice Chair
Lawrence Davis - Municipal
Dan Mayfield - Retiree
Steve Neel - State
Loretta Naranjo Lopez - Retiree [departs at 10:30]
Shirley Ragin - County
David Roybal – State
Maggie Toulouse Oliver - *Ex-officio* [arrives after 10:50]

Member(s) Excused:

Jackie Kohlasch - State, Chair
Claudia Armijo - State
Tim Eichenberg - *Ex-officio*
Patricia French - Municipal

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff/General Counsel
Dominic Garcia, Chief Investment Officer
Greg Trujillo, Deputy Director/Chief Information Officer
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

Others Present:

Harvey Leiderman, Reed Smith
Lenora Chavez, Retiree
Tom Toth, Wilshire
Joseph E. Montoya, Retired
Jake Salazar, Retired
Ernest Marquez, AES

3. **Approval of Agenda**

Mr. Roybal moved approval and Mr. Mayfield seconded.

Ms. Naranjo Lopez requested the removal of agenda items 5. A. “Approval of Revised Board Policies and Procedures” and 5.B. “Approval of Election Process Recommendations.”

Ms. Naranjo Lopez made a statement that she said was “covered by the State Whistleblowers law” and protected by the state’s Anti-Retaliation law. [A copy of the statement was not provided for the record]. She provided information under the following points: crimes attributable to Reed Smith, IPRA request violations, Board violence, violence against women, avoidable costs, and state law regarding IPRA.

She said the Board cannot take action on items 5A and B because they have abetted and aided in crimes.

Following her statement and without support on her agenda amendments, Ms. Naranjo Lopez stood and said that, “I will not be allowing a quorum” because voting on 5A and B would be a violation of state law and she left the meeting.

Board business was temporarily suspended. Ms. Toulouse Oliver arrived at 10:50 and a quorum was established.

The motion to approve the agenda passed by unanimous voice vote.

In response to Ms. Naranjo Lopez’s allegation regarding Board violence, Mr. Neel was given an opportunity to speak. He provided the police report [*Exhibit 1*] that she referenced in her statement. The police report states that “no crime was committed and no need for police involvement.”

Mr. Neel said he received five sworn notarized statements from Board members [*Exhibit 2*] attesting that there was neither an assault nor an attempt of robbery.

Harvey Leiderman, Reed Smith law firm, said, “lest silence be deemed to be assent” to the statements that were made about himself and his law firm, they were materially false and misleading and if the Board requires a line by line refutation of Ms. Naranjo Lopez’ statement he offered to do so.

Vice Chair Melia said Ms. Naranjo Lopez’s reference to crimes against women struck a chord with him as a father. He was present during the closed session, and never saw a physical threat. Further, it is wrong for people to make false allegations, and mentioned that Ms. Naranjo Lopez filed similar allegations against former Board member James Maxon. He noted that he had provided a signed statement on Mr. Neel’s behalf.

Mr. Davis said he too signed an affidavit, and there was neither assault nor robbery. These false allegations will hinder the Board and its ability to function. Mr. Mayfield said he also signed an affidavit and apologized to Mr. Neel for this unfortunate occurrence. He mentioned that Mr. Maxon was deeply disturbed by the false allegations.

Ms. Ragin said she was present during the closed session referred to by Ms. Naranjo Lopez and did not witness the incident as she described it. She said that she provided a sworn affidavit in support of Mr. Neel. These allegations do a disservice to the members, state Ms. Ragin.

Mr. Roybal said he too was in support of Mr. Neel.

4. Approval of Consent Agenda [*Exhibit 3: Consent Agenda*]

Mr. Mayfield moved to approve the Consent Agenda. Mr. Davis seconded and the motion passed without opposition.

5. Unfinished Business

A. Approval of Revised Board Policies and Procedures

[*Exhibit 4: A table of comments with reference to the page; Exhibit 5: Redline line copy*]

Rules & Administration Committee Chair Davis said the Board has had the revised policies and procedures to review for over six months. The State Auditor and Attorney General have both expressed concern that the PERA Board revise and approve the policies and procedures. The intention of the changes are to bring the Board into alignment with the state's recommendations and Board best practices.

Ms. Toulouse Oliver recommended changing the date at the bottom of the document to reflect 2019 and its adoption date.

Mr. Leiderman said a clean current redline version of the policies was posted on the BoardPortal. At the previous meeting, Board members were invited to send comments to him in advance of today's meeting. Member French forwarded comments and they talked on the phone. She was unable to attend today's meeting, and he brought forward her comments.

Mr. Leiderman reminded the Board of three changes, although not voted on last time, appeared to have consensus and were incorporated into the red lined copy. He reviewed Ms. French's concerns and invited other comments.

Regarding the election of Board Chair and Vice Chair, General Counsel Pittard pointed out that in February 2019, the Board modified the Policies & Procedures regarding nominations for Board Officers, which provided for a two-prong process, where nominations will be made at the first meeting of the Board for the calendar year, and then the vote taken at the first regular meeting. The provision also allows for additional nominations to be made from the floor on the day of the election.

Ms. Toulouse Oliver supported the policy as outlined by Ms. Pittard.

There was consensus to retain the language as outlined by Ms. Pittard. There was also agreement to remove the reference to "different groups" on page 12.

Regarding the executive director's compensation or authority Mr. Leiderman said there were comments regarding "appearance of impropriety" and "education and travel" approvals. Currently, the Board chair provides approval of travel. Mr. Leiderman said a number of other state fund boards rely on the executive director and staff to gather information and make approvals. The director is considered the top administrator position, and administrative acts are

completed by the director and reported back to the board. Ms. French has suggested the Board chair retain that authority, not the director.

Mr. Davis recommended focusing on the three concerns raised by Ms. French regarding the executive director's authority versus the Board chair. Other issues may be more appropriate for discussion in January with new members and a new chair.

The policies and procedures will not be perfect, but can be implemented and then tweaked throughout the year.

Mr. Leiderman requested clerical approval to ensure the NM statute references are correct and to renumber the document.

Vice Chair Melia expressed concern that it is unrealistic that the Board schedule emergency meetings, and it would be difficult to call if it were not the Chair's call. Ms. Pittard said the section referring to modifying meeting dates requires tightening. As per the Open Meeting's Resolution, which the Board approves the first meeting in January, Board meetings are established as the last Thursday of the month.

There was consensus to retain the language that the Board Chair could change the published adopted schedule, and to schedule special and emergency meetings without approval of the full Board.

Mr. Roybal asked whether there were any conflicting sections within the policies, and Mr. Leiderman responded that he was unaware of any.

Mr. Davis moved to adopt the Board Policies & Procedures [numbered 136756128.6, redlined] as presented with the following changes:

- Page 11, removal of "balancing the views"
- Page 15, Chair can remove "non-Board"
- Retain the current nomination process
- Retain the ED's authority
- Authorize staff to renumber, verify NM statutes and fix any typos and the date.

Ms. Toulouse Oliver seconded and the motion passed by unanimous [7-0] voice vote.

B. Approval of Election Process Recommendations

Ernie Marquez, Automated Election Services, offered that, in the event the Board continues to be elected, a few suggestions to the election process:

- Certification with a signature on return envelope
- A signature line on all ballots
- Consider implementation of electronic voting or telephonic. Only one ballot whether electronic, hard copy or telephonic will be accepted.
- Send candidate correspondence (notices, calendars, expenditure reports, etc.) by certified mail requiring the candidate's signature, as well as email. This suggestion was made in light of a candidate's allegation that the bio as shown on the ballot was not candidate produced, which Mr. Marquez said is not true.

Mr. Marquez explained that AES converts the PERA ID and assigns an ID number that is on the return envelope. If the Board is interested in electronic voting he would have AES's IT expert attend a meeting.

Ms. Toulouse Oliver said the big concern is to make sure votes are not hacked or tampered. If online voting is implemented, she recommended an audit of it to ensure votes were correctly cast. In addition to the unique ID (which is not the PERA ID) require the last four digits of the individual's social security to further validate the voter.

Ms. Pittard said that currently, each ballot requires certification that the voter is eligible to vote in the election. The elections are conducted by regulation, not statute, and can be changed.

Ms. Toulouse Oliver said it was important that online voters understand that their ballot is not secret. Essentially, there would be two classes of voters: those with ballot secrecy and those without. Adding a signature would create an additional validation that would be beneficial.

Stating that she was not opposed to online voting, Ms. Ragin said additional research and a greater understanding of the process was needed. Mr. Marquez invited the Board to visit his business.

Deputy Director Trujillo confirmed that there was an issue in the past when a printer mailed the ballots a week before they were scheduled to be sent. It resulted in no voting repercussions but since then, the voting process has been outsourced.

Mr. Davis moved to accept the suggestion to include a signature and print name lines on the return-envelope. Ms. Ragin seconded and the motion passed by unanimous voice vote.

Ms. Toulouse Oliver recommended adopting the certified mail/return receipt requested and email for candidates' packets and so moved. Mr. Davis seconded and the motion passed by unanimous [7-0] voice vote.

On the Board's behalf, Vice Chair Melia thanked Mr. Marquez for his services to PERA.

C. Trustees Report on Educational Travel

1. Tim Eichenberg – Absent

2. Lawrence Davis – CAPPP Part II

Mr. Davis said that this training is really valuable and provides an in-depth dive over financial transitions, analyses, terminology, etc. He encouraged the other Board members to attend the CAPPP trainings.

3. Loretta Naranjo Lopez – Absent

4. Patricia French – Absent

5. Claudia Armijo – Absent

Board will recess to Executive Session NMSA 1978 Section 10-15-1 (H)(7)

A. Discussion with Counsel regarding pending litigation: *The Retired Public Employees of New Mexico, Inc. v. The Public Employees Retirement Association of New Mexico Board; Wayne Propst, in his individual capacity, and Susan Pittard, in her individual capacity, United States District Court for the District of New Mexico, Case No. 1:19-cv-00891*

Roll call vote the Board recessed to executive session:

Jackie Kohlasch	Absent
Claudia Armijo	Absent
John Melia	Yes
Lawrence Davis	Yes
Patricia French	Absent
Dan Mayfield	Yes
Steve Neel	Yes
Loretta Naranjo Lopez	Absent
Shirley Ragin	Yes
David Roybal	Yes
Tim Eichenberg	Absent
Maggie Toulouse Oliver	Yes

[The Board met in executive session from 12:09 to 12:25]

Mr. Mayfield moved to return to open session and Ms. Ragin seconded. Vice Chair Melia announced that the only items discussed were those listed in the agenda and requested a roll call vote:

Jackie Kohlasch	Absent
Claudia Armijo	Absent
John Melia	Yes
Lawrence Davis	Yes
Patricia French	Absent
Dan Mayfield	Yes
Steve Neel	Yes
Loretta Naranjo Lopez	Absent
Shirley Ragin	Yes
David Roybal	Yes
Tim Eichenberg	Absent
Maggie Toulouse Oliver	Yes

At this point, the Board lost its quorum and the remaining items were offered for information.

6. New Business

A. Executive Director's Report - report was included on the BoardPortal

B. Update on IPOC Sponsored Legislation

Regarding IPOC, Mr. Propst said the December 4th meeting was the last for the interim. IPOC considered and endorsed a number of PERA-related bills. The bills and any other legislation related to PERA will be brought back to the Board at its January 14th meeting to

determine a position. The pre-filing period begins December 16th and runs until January 17th.

Mr. Propst said that he expected the bills which were endorsed by IPOC will be pre-filed. The bills include the PERA Solvency legislation which is an outgrowth of the Governor's task force, and provides for a number of carve-outs for those receiving less than \$25,000 in pension and/or salary, and protects retirees 75 or over from any changes to their COLA – which is approximately one-third of PERA's retirees' population; another significant change is a delay in the 4 percent contribution increases (2 percent for employee and 2 percent for employer) in order to address concerns regarding the need to budget for the increases and address the disparities between state general division and some of the municipal divisions. Another change restores the 5-year vesting period for Tier 2 members. The legislation also removes the earnings cap of 90 percent.

The BoardPortal includes a report on the asset liability and cash flow impact of the Governor's legislation and Mr. Propst provided a review highlighting the COLA adjustments that occur with different returns. Regardless of returns, there is a floor of 0.5 percent COLA and it could be as high as 3 percent until there is 100 percent funding.

Mr. Propst reported that as of June 30, 2019, there were 40,550 retirees and 11,229 will be 75 or older as of July 1, 2020, and there are also 1,344 retirees who are under the exemption of disability or pensions less than \$25,000.

The legislation also includes a one-time \$76 million general fund appropriation to the PERA fund to pay for the three years of 2 percent non-compounding 13th check.

Mr. Propst highlighted the bill number which designates it as being on the Governor's call. There was other PERA-related legislation lacking that designation which may or may not be included and considered during the session.

A few bills were developed to address the solvency of the Judicial and Magistrate plans. One of the bills includes a five year diversion of the annual distribution to the Legislative retirement fund – which is currently funded at over 100 percent – to the Judicial and Magistrate plans. Another was a cash infusion from the general fund. IPOC also endorsed putting the docket fees directly into the general fund and then using these to fund the employer contribution as a statutory percent of salary for both the Judicial and Magistrate plans.

Mr. Propst said IPOC also endorsed a bill to restructure the PERA Board and make it an appointed board. The appointments consist of appointments from the State Personnel Board, NM Association of Counties, the Municipal League, a couple of appointed retirees, two non-PERA people with pension plan design experience appointed by the Speaker of the House and President pro-tem, and the Secretary of DFA would serve as a member. The terms would be four-years and no member could serve more than two terms. The membership would have geographically diversity around the state.

The Governor's call includes a bill making some overtime pay included as salary for pensionable wages for municipal police and fire. The employee and employer would pay contributions on those wages.

Mr. Propst thanked Ms. Lujan for her attention to the transition to Voya.

7. Adjournment

Having completed the agenda, Vice Chair Melia wished all a Happy New Year and declared this meeting adjourned at 12:50 p.m.

Approved by:



John Melia
Vice Chair, PERA Board

ATTEST:



Wayne Propst, Executive Director

Attached Exhibits:

Exhibit 1: Police Report provided by Mr. Neel

Exhibit 2: Six Affidavits from witnesses of the October 8th executive session

Exhibit 3: Consent Agenda

Exhibit 4: Table of comments regarding the Policies & Procedures

Exhibit 5: Policies & Procedures redline copy