

NEW MEXICO
PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION
RULES & ADMINISTRATION COMMITTEE MEETING
June 8, 2021

This meeting of the Public Employees' Retirement Association Rules & Administration Committee was held on the date cited above via Zoom tele/videoconferencing. Paula Fisher, Chair, called the meeting to order at approximately 10:31 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

Paula Fisher, Chair
Steve Neel, Vice Chair
Diana Rosales Ortiz
Shirley Ragin
Roberto Ramirez

Other Board Members Present

Francis Page
Lawrence Davis
Tim Eichenberg
David Roybal

Staff

Greg Trujillo, Acting Executive Director
Susan Pittard, General Counsel
Trish Winter, Executive Assistant
Anna Williams, CFO
Kristin Varela, Interim CIO
LeAnne Larranaga Ruffy, Interim Deputy CIO
Karyn Lujan, SmartSave Plan Manager
Jessica Trujillo, HR Manager
Geraldine Garduno, Assistant General Counsel

Others in Attendance

None

2. Approval of Agenda

A motion to approve the agenda was made by Ms. Ragin seconded by Mr. Neel. The motion to approve the agenda passed by roll call vote of 3-2 as follows:

Paula Fisher No

Steve Neel	Yes
Diana Rosales Ortiz	No
Shirley Ragin	Yes
Roberto Ramirez	Yes

3. Approval of Consent Agenda

Chair Fisher advised she had reviewed the minutes of Committee meetings on March 9, 2021, and March 25, 2021, and they seemed to be in order.

A motion to approve the consent agenda was made by Mr. Neel and seconded by Ms. Ragin. The motion to approve the consent agenda passed by roll call vote as follows:

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

4. New Business

A. Approval of Proposed Rulemaking and Timeline

[Exhibit 1: Memo dated June 3, 2021, re Proposed Rule Changes 2021]

[Exhibit 2: Proposed Rulemaking Timeline Rule]

1. Rule 2.80.100 NMAC General Provisions

Referring to her memo to the Committee dated June 3, 2021, Ms. Pittard said this detailed the rulemaking regulation changes that staff was recommending, and she would provide a summary of the rules, and present a timeline to the Committee. She noted that these were not the actual rules to be voted on, that the Committee would be voting on moving the rule forward for amendment at the actual rulemaking.

Ms. Pittard explained that Rule 200 is the general provision regarding the Board and procedures specific to elections. She said staff was recommending, given the Board's decision to accept electronic nominating petition signatures, that they clarify the rule to define for purposes of nominating signatures what a signature is, and the exact requirements for acceptance of an electronic signature. Ms. Pittard said they are further clarifying the rule on electronic ballot methodology. She said currently there is some desire on the Board to move forward with electronic balloting, and they recommend that the regulation be modified to provide a methodology and the requirements for electronic ballots. Ms. Pittard said an additional recommendation regarding Rule 200 was that the Committee may want to consider creating a Standing Governance Committee. She mentioned this is at the Board's discretion, and that the recommendation has been before the Board since 2015 and raised by internal audit and fiduciary counsel that it may be something the Board would like to consider.

Referring to Rule 2.80.200 regarding elections, Ms. Rosales Ortiz said she still had concerns as she had previously raised at the January meeting. She noted that while some things have changed, and receiving nominations seemed to her to be successful, that Mr. Marquez had not answered all her concerns and questions.

Ms. Rosales Ortiz suggested additional research and further due diligence was needed on Rule 2.80.200.80 regarding electronic ballots, and that she thought the wording of this rule was not right. She said the current wording of electronic nominated petitions with original signatures, is what had happened this year for candidates, and that signatures were original for individuals interested in submitting petition nominations. She said she did not want the public or members to be misled or intimidated with the verbiage of electronic signatures, and that in her other roles an electronic signature is either a PDF electronic signature or a digital signature – an encrypted token into a document. She said she wanted to ensure that it was clarified that nominations still need the original signatures but can be submitted electronically.

Chair Fisher thanked Ms. Rosales Ortiz for her due diligence on this particular election change. She said while she believed Ms. Pittard had stated this item would just move forward, and the vote would be later, as Ms. Rosales Ortiz had already done due diligence on this item with a view to improvements for members, she did not see any reason why the Committee could not vote at the regarding the electronic signatures.

Mr. Neel said he was comfortable that Ms. Rosales Ortiz had an understanding of what she would amend or revise to the rule. He asked whether the Committee could revise the document to incorporate Ms. Rosales Ortiz's revisions or amendments to progress the item.

Ms. Pittard responded if the Board wanted to change the concept to electronic submission of signatures that would be fine. She said given that direction, they would move forward with modifying the rule to reflect that. Ms. Pittard also confirmed a further question from Ms. Rosales Ortiz that the Committee could approve the items individually, and give that direction, staff would the language clarified to reflect that nominating petition signatures will be valid if electronically submitted.

Rosales Ortiz made a motion to approve items 1 and 2 in the memo and asked for clarification on the number of the Rules 200.80 and 200.

Responding, Ms. Pittard repeated that the Committee had to approve the items according to the agenda. She said while the memo gave details of what rules are being changed and the provisions of each, the approval of the rulemaking had to be based on the agenda. She advised they approve each rule one by one, or collectively.

Ms. Rosales Ortiz said she would need to undertake more research and due diligence on elections and governance. She said that as Rule 200 was currently only half approved, she did not think it was appropriate at this point as it needed further review and modifications.

Chair Fisher suggested the items be moved forward to the agenda for the next Committee meeting to allow for more due diligence to be done on the various rules presented.

Ms. Rosales Ortiz said on Rule 200, at this point she was saying no to approval. Chair Fisher clarified whether Ms. Rosales Ortiz had made an earlier motion. Ms. Rosales Ortiz responded that she believed the motion was undecided until there was clarification and asked counsel for confirmation.

Chair Fisher said she believed that as the item related to the rules in the 200s, and Ms. Pittard had stated they needed to be approved as a whole, that they should not be moved forward at that point for a final vote until more documentation was available.

Ms. Pittard reiterated that all the Committee would be doing at this meeting was approving the four rules to be on a timeline for a public rulemaking occurring in October 2021. She advised if the Committee

chose not to amend Rule 200 that was their prerogative. However, the consequence would be those rules would then miss the opportunity for amendment as part of the rulemaking for this year. She advised the timeline was to follow strict procedural requirements for public rulemaking to allow for advertising the actual rules and receiving public comment.

Mr. Neel clarified with Ms. Pittard that the memo was basically to stipulate the rules that will be changed, and that the specifics of some of the changes were still be determined. Referring to Ms. Rosales Ortiz's concerns that how the rule should be changed was still uncertain, Mr. Neel suggested that the Committee approve the rule changes and the timeline, and then work on the specifics at a later point and asked if that was the appropriate direction. Ms. Pittard confirmed that was the desire of staff, but it was the Board's decision.

Chair Fisher asked Ms. Pittard why there was a rush to have approval at the current meeting, with the changes to be determined later.

Responding to Chair Pittard, Ms. Pittard advised there were statutory changes to put in place following the 2021 legislative session. Specifically, Senate Bill 90 and Senate Bill 315 concerning Rule 100 and Rule 2100. She advised if those were the only rules that the Board wanted to move forward with regarding this rulemaking they could proceed accordingly, but she would request that those rules be considered for the instant rulemaking. She reiterated that the Board may run into problems if they want Rule 200 modified for the 2022 election cycle, but again, that was up to the Board.

Thanking Mr. Neel for his clarification with counsel, Ms. Rosales Ortiz said that gave her a level of comfort to move forward with the timeline. She said she wanted to ensure that all members are informed and aware of what needs to happen, and there is nothing hidden.

Referring to the proposed timeline presented by Ms. Pittard, Ms. Rosales Ortiz noted that the date of the Rules & Administration Committee in progress was June 8, 2021, the memo to the Board for the rule amendments was scheduled for June 15, 2021, and then after that, the item would be on the Board agenda. She asked Ms. Pittard what would happen if the rules were not clearly defined at that point. If they had to push it to approval on what was to be reviewed, what would happen if full Board approval was not obtained.

Responding Ms. Pittard said if the Board does not approve a certain rule to be amended, then it will drop off the rulemaking.

Acting Board Chair Page said although he was not a member of this Committee, in his opinion, they should go through each agenda item, i.e., 5.A.1, 5.A.2, 5.A.3, and the detail on the corresponding in the memo. Chair Fisher agreed.

Mr. Neel said he thought it was somewhat agreed that changes would be made, and asked Ms. Pittard at what point on the timeline the Board would have the specific changes, and whether it was with the rule amendments on June 15, 2021. Responding to Mr. Neel, Ms. Pittard said they would aim to provide draft rules as soon as practical to the Board for the meeting on June 24, 2021. She said while some of the rules were a work in progress, they were not complicated rules, and the changes were succinct. She said the Board would then take final action at the July 29, 2021, Board meeting. Mr. Neel confirmed with Ms. Pittard that she would be amicable to working with Ms. Rosales Ortiz regarding the specific concerns she had.

Chair Fisher said they would move forward with the items as identified in the agenda, with the awareness of the amendments relating to the due diligence undertaken by Ms. Rosales Ortiz related to the rules on elections and the Executive Director. She noted this work has come a long way in the past few

weeks and thanked Ms. Rosales Ortiz for her efforts. Chair Fisher then asked Ms. Pittard to read to the Committee agenda item 5.A.1 – Rule 2.800.100 – General Provisions.

Ms. Pittard reiterated that for this item, staff was recommending changes to Rule 2.80.100 NMAC General Provisions, which layout definitions used throughout the administrative rules. She said they were proposing specific modifications to Rule 100. The first being to expand the definition of salary to track Senate Bill 90. With regard to a follow-up to Senate Bill 72 to adjust the definition of Juvenile Correctional Officers, and perhaps add a definition of Adult and Juvenile Probation Officers. She said the changes required by Senate Bill 315 were regarding Motor Trans being put into State Police.

Ms. Naranjo Lopez asked if any of the general provisions violate state statute and said that they need to show that they are able to provide the money for these plans and that they are fully funded. Responding, Ms. Pittard said the reason for modifying the rules was to make them in compliance with actual law passed in 2021, and that was the only goal for the administrative rulemaking. Ms. Naranjo agreed and commented she was concerned that laws can be passed but that does not mean they are following the statute, have the money to take care of it, and meet requirements.

Mr. Davis, referring to Ms. Rosales Ortiz’s previous discussion on the timeline for Rule 2.80.1800, the Executive Director General Provisions, said he wanted to make the Committee Chair and full Board aware that it was coming up almost two years that the previous Rules & Administration Committee, with PERA staff, had been creating new language for related policies and procedures and documentation, including the Executive Charter. He said the reports from the State Auditor, New Mexico Attorney General, and internal auditor had been very clear. He said he thought that as long as it was clarified and outlined within the New Mexico Code, there should not be a need for further due diligence on this rule, and he was happy to move forward at pace. In thanking Mr. Davis, Chair Fisher said she appreciated the update as she had not been aware of this prior work.

Mr. Page commented that once the Governor signs a bill it becomes a statute. He said his understanding of the process was that they were aligning PERA rules to conform with the statute. Ms. Pittard confirmed this was correct, and these are just clarifications to align with state statute. Chair Fisher confirmed they had been approved by the legislature. Mr. Page reiterated that the current goal was only to modify Rules to align and abide with the statute and that as the legislature makes the rules, whether they are right or wrong is not for them to answer. Chair Fisher confirmed that they must align with what the legislature has passed.

A motion to approve item 5.A.1, was made by Mr. Neel and seconded by Ms. Ragin. The motion to approve item 5.A.1, Rule 2.80.100 NMAC, passed by roll call vote as follows:

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

2. Rule 2.80.200 NMAC Organization and Operations of the Public Employees Retirement Board

Ms. Pittard said there were three changes noted in the accompanying memo they would like to see in Rule 2.80.200. These included the direction from the Board regarding nominating petitions to allow for

the submission of signatures electronically, to provide for electronic balloting, and the possible change, if the Board would like, to have a standing Governance Committee.

A motion to approve item 5.A.2, was made by Mr. Neel and seconded by Ms. Rosales Ortiz. The motion to approve item 5.A.2 passed by roll call vote as follows:

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

3. Rule 2.80.1800 NMAC Executive Director – General Provisions

Ms. Pittard explained that Rule 2.80.1800 NMAC were the administrative rules concerning the Executive Director, and she was aware that the Rules & Administration Committee had undertaken a tremendous amount of work in passing a resolution that was not considered by the Board in 2020, and that this was another way of doing it through the administrative rules. She said she had begun a draft of the rule which could be circulated, and that it would contribute greatly to being compliant with the oversight recommendations from the OSA and the Attorney General’s office.

A motion to approve item 5.A.3 was made by Mr. Rosales Ortiz and seconded by Mr. Neel. The motion to approve item 5.A.3 passed by roll call vote as follows:

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

4. Rule 2.80.2100 NMAC Member Contributions

Ms. Pittard explained this was an administrative request from staff regarding Rule 2.80.2100 Member Contributions to document a procedure for receipt of 1099s for deceased members from family members that are not filing estate probate. She said as there is no formal estate for receipt of those, that it had a step-by-step process requiring an affidavit of the family member requesting their 1099.

A motion to approve item 5.A.4, was made by Mr. Neel and seconded by Ms. Ragin. The motion to approve item 5.A.4 passed by roll call vote as follows:

Paula Fisher	Yes
Steve Neel	Yes
Diana Rosales Ortiz	No
Shirley Ragin	Yes
Roberto Ramirez	Yes

After the vote, Mr. Page explained that the rule allows the estate of a deceased member without a will in place to obtain the member’s 1099 and file their taxes if they need to. He said when usually when a deceased member has a will with a named Executor, the Executor can obtain the 1099 and file taxes.

5. Proposed Rulemaking Timeline

A motion to approve item 5.A.5, was made by Mr. Neel and seconded by Mr. Ramirez. The motion to approve item 5.A.5 passed by roll call vote as follows:

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

5. Adjournment

Having completed the agenda, Chair Fisher declared the meeting adjourned at 11:24 a.m.

Approved by:

Paula Fisher, Chair
Rules & Administration Committee Chair

ATTEST:



Greg Trujillo, Acting Executive Director

Attached Exhibit(s):

Exhibit 1: Memo dated June 3, 2021, re Proposed Rule Changes 2021

Exhibit 2: Proposed Rulemaking Timeline Rule