

NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
BOARD MEETING
May 31, 2018

This monthly meeting of the Public Employees Retirement Board was called to order by James Maxon, Chair, at approximately 11:50 a.m. on the above-cited date at the PERA Building, 33 Plaza la Prensa, Senator Fabian Chavez, Jr. Board Room, Santa Fe, New Mexico.

1. Roll Call

Roll call indicated a quorum with the following members present:

Members Present:

James Maxon, County, Chair
Claudia Armijo – State
Jackie Kohlasch - State
Natalie Cordova – State
Patricia French - Municipal
Dan Mayfield – Retiree
John Melia - Municipal
Loretta Naranjo Lopez - Retiree
Tim Eichenberg - *Ex-officio*

Member(s) Absent:

Maggie Toulouse Oliver - *Ex-officio*
Dan Esquibel – Municipal
Cathy Townes - State [excused]

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff/General Counsel
Greg Trujillo, Deputy Director
Karen Risku, Deputy General Counsel
Dominic Garcia, Chief Investments Officer
Dana David, Assistant General Counsel
Kristin Varela, Deputy CIO
Joaquin Lujan, Portfolio Manager
Trish Winter, Executive Assistant
LeAnne Larrañaga-Ruffy, Director of Equity
Karyn Lujan, Deferred Compensation Plan Manager
Christine Ortega, Portfolio Manager
Anna Williams, Chief Financial Officer
Anna Murphy, Portfolio Manager
Emily Lopez, Financial Specialist
Mark Montoya, Investments Department

Others Present:

Tom Toth, Wilshire Associates
Mike Krems, TorreyCove
Don Wencewicz, AFSCME Retiree

Thomas Rey, CLA
Jack Broder, AFSCME
Louis C. Trujillo, AFD RA
Edward Abeyta, AFD RA
Anthony Roybal, PERA Retiree

2. **Approval of Agenda**

Mr. Mayfield introduced the following motion:

“RESOLVED, that the PERA Board approve the agenda as presented.”

Mr. Melia seconded and the motion passed without opposition.

3. **Approval of Consent Agenda**
[*Exhibit 1: Consent Agenda*]

Ms. Naranjo Lopez said the April 17, 2018 Board meeting minutes which were presented as verbatim were incomplete. She said there was discussion missing and asked that they be removed from the consent agenda. The recording secretary offered to re-listen to the recording.

Prior to Ms. Naranjo Lopez raising concerns regarding the minutes, Mr. Mayfield introduced a motion to approve as published. Mr. Eichenberg moved to amend that motion to the following:

“RESOLVED, that the PERA Board approve the consent agenda with the removal of the April 17, 2018 minutes.”

Mr. Mayfield concurred with the amended motion and Mr. Melia seconded. The motion passed by majority [7-1] voice vote with Ms. Naranjo Lopez voting against and Ms. Cordova abstaining. She explained her vote was in opposition to the Reference Portfolio.

4. **Current Business**

A. **Executive Director’s Report**

Chair Maxon thanked Executive Director Propst for his leadership.

Mr. Propst said May 21st marked his sixth anniversary as PERA’s executive director. He thanked the board members for the opportunity and his staff for the talent they bring to the organization. He discussed the progress PERA has made during his tenure that includes financial controls, governance changes to investments, the Board’s focus on liabilities, SB27 and members services. The accounting process/improvement project has been one of the agency’s greatest successes. A number of positive things have occurred from the process including no audit findings for the past three years and significant improvements to RIO. The change to the governance structure of investments puts PERA at the forefront of best governance practices for investments.

He highlighted the following achievements during his tenure : accounting – the improvement of financial controls, and improving RIO, the benefit pension system, which has resulting in three years without audit findings, the comprehensive annual report; the governance structure that the Board

recently approved for investments puts this Board at best governance practice for investments; the Board's focus on the unfunded liabilities and work towards reaching 100 percent funding within a reasonable timeframe is a continuing process; legislation-wise, SB27 was a tremendous success for the agency; and under members' services, the strategic planning process and accompanying document is an evolving process that has benefited the members.

Mr. Propst said currently the amortization period is 55 years whereas the Board's goal is 30 years. State General and Municipal Fire are in an "infinite" amortization period and there is misalignment in funding levels, i.e., the State Police fund is overfunded. Discussions with those divisions will need to continue as the Board works on solvency and unfunded liabilities. The Judicial and Magistrate plans continue to be significantly short of accepted funding levels and although the plans are small, all plans should share in meeting responsible solvency levels. Administratively PERA is on sound footing.

Mr. Propst said PERA's liabilities and funding ratios are trending out past what the Board has set as policy goals.

During the past six years, Mr. Propst said he has been convinced that defined benefits are the only retirement vehicle that provides stable and secure retirement and that they are manageable and sustainable. He said he believed anyone who starts work today with a PERA affiliate should have the same opportunities for a good retirement as anyone in the system active or non-active. He characterized this morning's presentation by Mr. Garcia as the most informative that he has heard in his tenure.

The post-pension reform period where the legislature let SB27 evolve has been valuable in identifying the challenges. PERA will not be able to invest its way out of its liabilities. The agency will need to be clear-eyed and cautious in terms of sufficient preparation for a market correction.

He lauded the accomplishments of the agency's personnel both past and current, and said even with modification to the benefit structure PERA members will have the most generous public pension benefits in the public sector and that is on top of the fact New Mexico is a Social Security state and the outstanding 457 B plan that PERA offers to its members. He advocated discussing whether or not the investment assumptions should be tied to the cost of paying for the base benefit offered to the membership. He disliked the notion of inter-generational inequities in the system and was cognizant that Tier 2 members pay the same contributions as Tier 1 and will receive 20 percent to 25 percent less in benefits.

He encouraged the Board to formulate ideas and questions with a focus on paying down the \$5 billion unfunded liability and getting the plan to the 100 percent funded level.

Ms. Cordova thanked Mr. Propst for his leadership and PERA's management team for their services to the membership.

- B. Executive Session - Attorney Reports - The Board will go into Executive Session under NMSA 1978, Section 10-15-1(H)(3) to discuss these items**
 - 1. Administrative Appeal**
 - a. Michael Vigil**
 - 2. FY17 Schedule of Employer Allocation Exit Interview**

**3. Evaluation Committee Determination on Fiduciary Counsel Services RFP
No. NM 36600-2018-00005**

Ms. Naranjo Lopez moved to go into Executive Session pursuant to NMSA 1978, Sections 10-15-1 (H) (3). Her motion was seconded by Dr. Kohlasch and passed by unanimous roll call vote as follows:

James Maxon	Yes
Claudia Armijo	Yes
Jackie Kohlasch	Yes
Natalie Cordova	Yes
Patricia French	Yes
Dan Mayfield	Yes
John Melia	Yes
Loretta Naranjo Lopez	Yes
Tim Eichenberg	Yes

[The Board met in Executive Session from 12:30 p.m.-1:45 p.m.]

Ms. Cordova moved to return to open session. Ms. Armijo seconded and the motion passed by unanimous roll call vote as follows:

James Maxon	Yes
Claudia Armijo	Yes
Jackie Kohlasch	Yes
Natalie Cordova	Yes
Patricia French	Yes
Dan Mayfield	Yes
John Melia	Yes
Loretta Naranjo Lopez	Yes
Tim Eichenberg	Yes

Chair Maxon announced the only items discussed during executive session were those items listed on the agenda.

B. Final Decision on Michael Vigil PERA #20464

Treasurer Eichenberg introduced the following motion which Ms. Armijo seconded:

“In the matter of the appeal of Michael A. Vigil, PERA number 20464, the Board adopt the Hearing Officer’s proposed findings of fact and modify the Hearing Officer’s proposed conclusions of law as follows: The Board finds at the time of this re-employment Claimant was entitled to elect ERB membership under 22-11-17E; Claimant was denied that opportunity and Claimant’s elect PERA membership was not properly executed under that statute and ERB rule in effect at the time. Claimant could have elected ERB membership and exempted himself from coverage; therefore, Claimant is entitled to a refund of his PERA contributions from 2010 to the present. Based on the preponderance of the evidence, the Board reverses PERA’s decision and hereby grants Claimant’s request for reimbursement of his PERA contribution since 2010.”

The motion passed with eight yes votes and Ms. Cordova abstaining.

C. Acceptance of Evaluation Determination for RFP No. NM 36600-2018-0005

Mr. Mayfield introduced the following motion:

“RESOLVED, that the PERA Board approve the evaluation committee determination on fiduciary counsel’s services RFP NM 366 00-2018-00005.”

Dr. Kohlasch seconded.

Mr. Eichenberg said he wanted to go on record not accepting the evaluation committee’s recommendation because the one week or five working days timeframe gives the appearance of pre-selection.

Ms. Cordova agreed with Mr. Eichenberg’s observation regarding the time frame; however, at this time she was not comfortable with the Board not having fiduciary counsel. Ms. Armijo agreed with Ms. Cordova.

The motion passed by majority [6-3] voice vote with Treasurer Eichenberg, Ms. Naranjo Lopez and Ms. French voting against.

D. Reprimand and Censure for Patricia French Related to Unauthorized Board Travel

Chair Maxon read the resolution into the record as follows:

“Whereas, the legislature created the Board pursuant to the Public Employees Retirement Act and provided powers to the Board at §10-11-130 (A) which states: “The Board has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts...”; and

Whereas, the members of the New Mexico Public Employees Retirement Board serve as the trustees of the Public Employees Retirement Association; and

Whereas, under its statutory authority, in March 2001, the Board adopted Policies and Procedures - Board Policies. The Board Policies, as amended, are in effect now and were in effect at all times pertinent to the provisions of this Resolution; and

Whereas, the Board Policies at Section I (A) provide, in pertinent part:

As Trustees, Board Members are fiduciaries to the various PERA funds and must prudently administer these retirement systems for the sole and exclusive benefit of PERA members, retirees and beneficiaries. ... In order to maintain the respect, trust and confidence of its members and retirees, all Board Members ... must use the powers and resources of their office only to advance the interests of PERA members, retirees and beneficiaries and not to obtain personal benefits or pursue private advantage incompatible with these interests. Board Members ... shall conduct themselves in a manner that justifies the confidence placed in them by PERA members and retirees, at all times maintaining their integrity and discharging their responsibilities ethically in the course of their association with the PERA; and

Whereas, the Board Policies at Section I (E) (5) further provide, in pertinent part:

The Board shall establish and communicate Board policies and priorities and then monitor

performance. The Board recognizes that the achievement of its goals requires self-discipline by the Board as a whole and by individual Board members to abide by the policies articulated herein and to govern in a manner consistent with the Board's value statement. The Board is responsible for creating and maintaining an atmosphere that encourages frank and collegial discussions both at the Board and Committee levels and between the Board and PERA management; and

Whereas, pursuant to statute at NMSA Section 10-16-11, the Board adopted a Code of Conduct prescribing standards of conduct for Board Members, and which, if violated, constitutes cause for sanctions or discipline, including suspension or dismissal of an offending Board Member; and

Whereas, the Board Policies at Section VI. (A) create a duty for the Board to act as follows: Any breach of fiduciary duty, violation of this policy or other conduct that falls below the high ethical standard this Board expects of itself, shall be looked into by the Board; and

Whereas, the Board Policies at Section VI (C) (2) further mandate that: Violation of the Governmental Conduct Act or this policy is grounds for discipline...; and

Whereas, the Board Policies in Section VI provide for "Sanctions and Enforcement" of those Policies and include the Board's authority to impose disciplinary measures ranging from removal of a Board member to the following:

1. Formal reprimand and public censure by the Board, which shall be permanently recorded in the minutes.
2. Suspension from participation on the Board or a particular Board activity for a specified period of time not to exceed one year; and

Whereas, the Board Policies at Section I (D) (5) provide that, among their duties:

- b. Board Members and the Executive Director have a duty to use reasonable care to prevent co-trustees from committing a breach.
- c. Board Members and the Executive Director have a duty to compel performance or redress a breach; and,

Whereas, Board Member Patricia French, Member French, is currently serving on the Board for a fourth consecutive four-year term that commenced January, 2017; and

Whereas, upon information and belief the Board has determined that during the course of her most recent term Member French violated Board Policies and its Code of Conduct by engaging in conduct that is detrimental to the trust fund, the Board and PERA and falls below the high ethical standards the Board expects of its members, as provided below:

1. In or about March, 2017, Member French violated the PERA Act and Board Policies by attending the NASP Day in Private Equity Conference in Los Angeles, California without seeking or receiving prior approval and then failing to disclose her attendance at the Conference. Member French further violated the PERA Act, Board Policies and its Code of Conduct by accepting a gift of free Conference registration offered to trustees when non-trustee conference attendees were charged and paid a Conference registration fee of \$595.00; and,
2. On May 11, 2017, PERA's General Counsel met with Member French to discuss her alleged failure to comply with the PERA Gift Prohibition, NMSA 1978, Section 10-11-130.1, as incorporated into the Board Policies at Section III.E, when she attended the NASP conference. During the meeting PERA General Counsel clearly stated that acceptance of the complimentary conference registration fee is impermissible under paragraphs (A)(1) and (A)(4) of Section 10-11-130.1, which prohibit acceptance of anything of value from the four categories of persons or entities listed therein; and,
3. The PERA Gift Prohibition is intended to prevent both actual conflicts of interest and the appearance of a conflict, both of which are also longstanding prohibitions of the

- PERA Board, the Governmental Conduct Act, the Public Employees Retirement Association, and the New Mexico Office of the Attorney General; and
4. After receiving a letter from the PERA General Counsel memorializing their May 11, 2017 conversation, Member French failed to timely respond and instead waited over one month to respond by letter dated June 22, 2017 in which she stated, among other things: “on reflection, I should have notified PERA of my intentions and gotten board approval”; and “it is my intent to do whatever is necessary to comply with the PERA Gift Prohibition”; and,
 5. Member French’s written response raised significant concerns in light of the fact that she acknowledged her failure to pay the conference registration fee and acknowledged that she accepted gifts of a pre-conference dinner and a conference breakfast/lunch. Although denying she attended any conference sessions, other than the panel portion of the Conference, Member French was photographed at numerous conference sessions.
 6. Although stating in her response her intention to “do whatever is necessary to comply,” Member French failed to cooperate with the Board’s inquiry and failed to provide full disclosure of the facts, resulting in the Board’s need to fulfill its duties by hiring an investigative firm at an unwarranted cost of time and expense to the Trust fund to review and report on the matter.
 7. On or about September, 2017, instead of cooperating with the Board’s inquiry regarding the allegations of her potential misconduct, Member French sought to thwart the Board’s abilities to gain the information necessary to determine if Board Policies were violated and filed a lawsuit against the Executive Director and the then Board Chair, without good cause, which lawsuit was summarily dismissed by the Court at a cost of time and expense to the trust fund;
 8. On or about October 5, 2017, seemingly in retaliation for PERA’s General Counsel’s advice that Member French fully disclose the circumstances regarding her attendance at the unauthorized conference, Member French filed a Disciplinary Complaint with the State of New Mexico Disciplinary Board against the PERA General Counsel, without good cause, which complaint the Disciplinary Board found was unsubstantiated and therefore summarily dismissed;
 9. After several months and the dismissal of Member French’s lawsuit, the Board initiated its investigation into the questionable acts of Member French. The independent investigation revealed a pattern and practice by Member French of acting solely in her own self-interest and in disregard for the fiduciary duties of PERA Board Members and the legitimate concerns of the trust fund, including the following findings and conclusions:
 - a. Member French was in a position to clear this matter up early on in the process and she elected not to do so. Instead, she hired an attorney, filed a legal action against the Executive Director and then Board Chair, refused to provide the requested receipts, and stated “make this go away” to the then Board Chair and Vice Chair while they were at a conference in Florida.
 - b. Member French, through her attorney, failed to respond to the investigator’s requests to interview Member French.
 - c. Member French failed to receive the approval of the PERA Board to attend and represent PERA at the March 2017 NASP Conference.
 - d. As evidenced by documents regarding her attendance at a previous NASP conference held in Chicago in June 2015, Member French had received Board approval in the past to attend a NASP conference. Based on interviews with Board members, the investigator stated it appeared the Board would have approved Member French’s

participation as a moderator at the March 2017 NASP Conference.

- e. Member French's failure to receive the PERA Board's approval violated the Board Policies and Procedures regarding individual board member conduct and Board travel; and,
10. The actions of Member French, specifically her failure to seek or receive approval to attend the NASP Conference, followed by her failure to fully disclose the circumstances surrounding her attendance at that conference, followed by her failure to cooperate with the Board's attempts to meet its fiduciary duty to investigate the allegations and determine if a violation of Board Policies occurred, followed by her failure to cooperate with that investigation resulted in unnecessary expense to the Fund, unnecessary conflict within the Board and between certain Board Members and PERA staff and reflects poorly upon the Board, the Association and creates concerns for PERA members and beneficiaries, as well as with PERA's legislative oversight agencies and the public;
11. The actions of Member French have disrupted the prudent conduct of PERA's business, jeopardized the Board's ability to fulfill its duties and exposed the Board and trust fund to potential liability.

Whereas, Member French's attendance at the NASP conference and acceptance of the complimentary conference cost violated paragraphs (A) (1) and (A) (4) of Section 10-11-130.1, and her failure to disclose or seek Board approval of her attendance creates, at minimum, an appearance of impropriety; and

Whereas, when certain Board members were found to have violated the PERA Gift Prohibition in 1999, the Board unanimously voted to require those Board members to repay expenses related to their unauthorized conference attendance and to ban the members' participation on evaluation committees for which the conference sponsors would be potential bidders; and Whereas, when faced with a possible violation of the PERA Gift Prohibition in 2002 and prior to formal Board action, a then Board member voluntarily resigned his seat on the PERA Investment Committee and recused himself from voting on the selection and retention of any investment manager for a period of twelve months and stated that his resignation and recusal were intended to "minimize negative repercussions to the Board and preclude any potential perception of conflict."

Whereas, the Board now determines that the foregoing actions illustrate a pattern of violations of Board Policies and Code of Conduct; that Member French's failure to fully disclose the circumstances surrounding her unauthorized attendance at the NASP Conference and failure to cooperate with the Board's independent investigation of possible violation of the PERA Act, and Member French's obstructive conduct escalated rather than diminished in the face of the investigation; that the violations by Member French establish a pattern and practice of behavior that falls below the highest ethical standards required of a fiduciary; that the violations have adversely affected the mission and duties of the Board, the administration of PERA and consequently the interests of the members, retirees and beneficiaries of the retirement systems for which the Board Members are trustees; and that, as illustrated by her continued and escalated inappropriate conduct, it is incumbent upon this Board to publicly reprimand and sanction Member French for these violations; and

Whereas, the Board Policies authorize the Board to sanction a Board Member under the circumstances presented in this Resolution by suspending the Board Members' participation in certain Board activities for a specified period of time not to exceed one year.

Now therefore, be it resolved that pursuant to the Board's authority under applicable law and policy, the Board takes the following actions:

- A. Member French is hereby publicly reprimanded and censured for her conduct in

violation of the PERA Act, Board Policies and Code of Conduct.

- B. Member French is hereby suspended and removed from serving in any capacity on the Board's Smart Save Committee, Rules and Administration Committee, and all other committees of the Board, for a period of one year, commencing on the effective date of this Resolution. Member French shall not receive statutory per diem or be reimbursed for any expenses if she attends committee meetings during the suspension period.
- C. Member French is hereby suspended from any Board authorized out-of-state education and travel activities, and shall not be reimbursed for any Board-related expenses, for a period of one year, commencing on the effective date of this Resolution. This suspension does not relate to entitlement to statutory per diem and approved expenses directly connected with attendance at official Board meetings and in-state Board education sessions and retreats in compliance with Board Member educational requirements under NMSA 1978, §10-11-133 (F) and 2.80.200.21 NMAC.
- D. Further violations of the law, Board Policies, Code of Conduct or fiduciary duty may lead to further sanctions and dismissal of Member French from the Board."

Having completed the recital of the resolution, Chair Maxon asked for a motion to adopt.

Mr. Melia moved to adopt the resolution as read and Mr. Mayfield seconded.

Ms. French thanked the Chair for extending the time periods needed for response to the allegations. "Cutting to the chase," Ms. French said the purpose of the investigation by the Board was to have an independent non-biased, third-party investigate the matter and give the Board his or her findings and conclusions as to violations of the law and/or policy of procedures. The third-party investigator, hired by the Board, conducted an investigation and provided a written report. The last paragraph of that report stating that, "other than Member French failing to gain PERA Board's approval to represent the Board at the NASP Conference, I found no other wrongdoing on her part. If the Board is not satisfied or disagrees with my report, I recommend that this matter be referred to the New Mexico Attorney General's Office."

Ms. French stated that if her only wrongdoing was failing to get prior Board approval for attending the conference and if the investigation results recommended that the matter be referred to the AGO if the Board is not satisfied, she asked what further investigations took place that found her guilty of further wrongdoing. The PERA Board's move to sanction her appears to be "an authoritative and dictatorship style of self-governance."

Ms. French read an email that she received recommending that she quit trying to prove her innocence and accept what the private investigator found. The Board insisted on a non-biased investigation and the investigation found no wrongdoing. She pointed out that she had no intention of asking for PERA to reimburse her for the expenses to serve as a moderator at the conference.

Ms. Naranjo Lopez stated for the record that Universal Investigation found that Member French did nothing wrong. The one violation misapplied the Board policy. Pre-approval was not required if Board member did not intend to request expense reimbursement. She noted that Thornburg is an investment manager for PERA. Two Board members attended and received education credit for attending an investment forum hosted by JP Morgan and neither Board member paid fees.

Treasurer Eichenberg said it appeared from the photos supplied by Mr. Melia at the Taos meeting that NASP is a woman's minority group. Ms. French said NASP is National Association for Security Professionals and she did attend in 2015 a NASP conference. This was a regional chapter that

sponsors children from Crenshaw High School.

Treasurer Eichenberg remarked that as an *ex-officio* member he has never asked for approval to travel, yet PERA member is listed as one of his credentials. He asked Ms. French whether she took vacation from her job to travel to the conference and she responded in the affirmative although she attends PERA meetings on payroll. He concluded that Ms. French paid for everything, was on vacation time, that she had every right to be there and that the Board has gone overboard. He opined that the Board needs more education and training and should be permitted to do everything possible to improve their background to promote PERA and the fund's sustainability.

He said action should be limited to a censure and the Board take to heart that they are asked PERA-related questions wherever they are.

Stating Ms. French could have been more forthcoming, Treasurer Eichenberg introduced a motion to amend the motion to be limited to a censure. His motion died for lack of a second.

Mr. Melia said he hoped once the vote is taken the Board can move forward and put this behind them. He said the actions Ms. French took against Ms. Pittard, former chair Mayfield and Mr. Propst were particularly troublesome. NASP was a mistake that Ms. French should have owned up to earlier.

Ms. French said there are current members of this Board who have gone to conferences, earned credit and not received approval beforehand. "If the rules apply to me, they should apply to everybody." She said she feels wronged by the actions of PERA and felt she needed to seek legal counsel. She said attending the conference that supports minority kids was to her a good deed and if this Board wants to censure her for that, that's their choice.

Chair Maxon asked Ms. French why she refused to meet with the independent investigator and she responded that was on the advice of her attorney. Ms. French said she never denied going and provided the receipts as requested.

Dr. Kohlasch pointed out that Ms. French identified as being part of PERA at the conference.

Dr. Kohlasch called for the question and Ms. Armijo seconded.

The motion to approve the resolution passed by majority (5-3) voice vote with Members Eichenberg, Naranjo Lopez and French voting against. [Ms. Cordova was not present for this action.]

5. Other Business

[*Exhibit 2: Statement for the public record - Loretta Naranjo Lopez dated 5/31/18*]

Ms. Naranjo Lopez objected to *La Voz* being sent out without her response to the draft censure resolution. She said that the New Mexico State law permits the NMPERA Board to delegate investment and management functions. The law only shields the NMPERA Board from liability if it exercises reasonable care, skill and caution in selecting agents, establishing the appropriate scope and terms of the delegation and periodically monitors the agent's performance. She said the NMPERA is not effectively monitoring NMPERA Staff, nor is the Board holding staff accountable. The NMPERA Board is distracted from the \$5 billion funding gap. She said her document [*See Exhibit 2*] advocates for the PERA membership, shields its author from liability, reveals cause to clarify the Spring Edition

of *La Voz* and cause for investigating select NMPERA senior staff. Reading from her document Ms. Naranjo Lopez highlighted errors in *La Voz* and recommended correcting it to maintain public trust, a two-step process to address the \$5 billion gap, senior staff's failure to supervise and mistreatment of Board members, breach of duty and the inappropriateness of censuring.

Ms. Naranjo Lopez recited her statement and concluded by stating that, "the PERA Board should take steps to close the current \$5 billion funding gap. Such steps should involve a comprehensive analysis of investment and management functions in light of NMPERA's large and persistent funding gap. Everything should be on the table, including the possibility of direct investment by the NMPERA Board through low-cost index funds or alternatives that bring expected returns greater than NMPERA's 7.25 percent target rate of return."

Ms. Naranjo Lopez thanked the Board for the opportunity to review her statement and added that she objects that her response to the censure of March 20, 2018 was not included in *La Voz*.

Anthony Roybal, PERA Retiree, said he continues to hear about the unfunded liability and appreciated what Ms. Naranjo Lopez brought forward. Mr. Roybal said the Board needs to do something about the unfunded liability. The notion of eliminating the COLA continues to surface as a method to address the liability. There should be more Board members that represent retirees. Emphasizing that the unfunded liability needed to be addressed and while he could support freezing the COLA, solutions should be applied across the board. Every member should participate in resolving the issue. He said the Board may end up in court because they are not protecting the fund.

Mr. Roybal said this was the second Board meeting he has attended and it was apparent that the Board is not on the same page and can't even get along. He urged the Board to settle their differences and start focusing on the problems of the membership. "Enough is enough...do your job...Stop your bickering, settle your differences and move forward and fix this problem."

Dr. Kohlasch reminded Mr. Roybal that SB27 affected all of the PERA membership not just retirees. She assured him that the Board was not seeking to merely cut the COLA.

Ms. French thanked Mr. Roybal for attending and sharing his thoughts. She noted that the Fire and State plans have the largest liabilities.

Chair Maxon said this year ends the five-year moratorium on the pension plan reform.

Mr. Melia said when changes are discussed they will be across the plans; we're all in this together. Further, the Board members represent the entire membership.

Louis Trujillo, Retired Firefighter, addressed the board and said he has enjoyed retirement for several years and when SB27 was passed it was hard for retirees. He wants to make sure the fund stays solvent for the future generations. He said contributions may need to be increased, so be it, and although he does not favor reducing his COLA, he can support it if it keeps the fund solvent.

On behalf of the retirees of the Albuquerque Fire Department, Mr. Trujillo thanked the Board for their service.

6. Adjournment

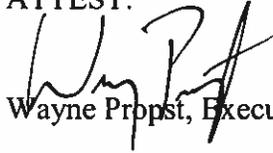
Chair Maxon declared this meeting adjourned at 3:00 p.m.

Approved by:



James Maxon
Chair, PERA Board

ATTEST:



Wayne Propst, Executive Director

Attached Exhibits:

Exhibit 1: Consent Agenda

Exhibit 2: Statement for the public record - Loretta Naranjo Lopez dated 5/31/18



INVESTED IN TOMORROW.

PERA Board Meeting
May 31, 2018

CONSENT AGENDA

- 1. Approval of Minutes: April 17, 2018 and April 26, 2018
2. Investments
a. Approval of Reference Portfolio as approved at the 5/31/2018 Investment Committee Meeting
3. Ratification of Retirements - Benefits processed through 5/1/2018:
a. Normal
b. Deferred
c. Reciprocity to ERA
d. Non-Duty Death
e. Non-Duty Disability
f. Reciprocity to PERA
4. Affidavits for Free Military Service:
a. Juan Cabrera - 9 months
b. Timothy Esquibel - 15 months
c. Cimarron Gonzales - 19 months
5. Resolutions
a. Resolution No. 904-18 Authorizing The Village of Bosque Farms To Pick-up 50% Of The PERA Municipal Police Member Coverage Plan 5 Member Contributions in Effect April 9, 2018.
b. Resolution No. 2018-25 Authorizing The Taos County to Pick-Up 8.43% Of The Municipal Police Member Coverage Plan 5 Member Contributions in Effect July 1, 2018
c. Resolution No. 2018-26 Authorizing The Taos County to Pick-Up 8.75% Of The Municipal General Member Coverage Plan 4 Member Contributions in Effect July 1, 2018
d. Resolution No. 2018-27 Authorizing The Taos County to Pick-Up 8.27% Of The Municipal Detention Officer Member Coverage Plan 1 Member Contributions in Effect July 1, 2018
e. El Valle de los Ranchos Water & Sanitation District passed Resolution No. 2018-04-01 to adopt the PERA Smart Save Deferred Compensation Plan to offer to its employees.
6. Setting of Meetings: June 2018 & July 2018 Meetings
a. SmartSave Committee June 12, 2018 9:00 a.m.
b. Audit & Budget Committee June 12, 2018 After SmartSave
c. Disability Review Committee June 12, 2018 11:00 a.m.
d. Educational Session June 28, 2018 9:00 a.m.
e. Disability Review Committee July 10, 2018 11:00 a.m.
f. Board Retreat, Ruidoso, NM July 24-26, 2018 tbd

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Trish Winter at 476-9305 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ms. Winter if a summary or other type of accessible format is needed.



STATEMENT FOR THE PUBLIC RECORD

By: NMPERA Board Member Lopez, Retiree Representative
To: New Mexico Public Employee Retirement Association Board
Date: May 31, 2018
Re: Request for clarification to La Voz subscribers to maintain the public trust
Cause for investigating NMPERA's Executive Director and General Counsel

Executive Summary

The New Mexico State law permits the NMPERA Board to delegate investment and management functions. The law only shields the NMPERA Board from liability if it exercises reasonable care, skill and caution in selecting agents, establishing the appropriate scope and terms of the delegation and periodically monitors the agent's performance.

The NMPERA Board is not effectively monitoring NMPERA Staff, nor is the Board holding Staff accountable. The NMPERA Board is distracted from the \$5 billion funding gap.

This document was designed to advocate for PERA members (closing the \$5 billion funding gap) while shielding its author from liability. This document reveals cause to clarify the Spring Edition of La Voz and cause for investigating select NMPERA senior Staff.

- The Spring Edition of La Voz contains two material misstatements of law and should be corrected immediately to maintain the public trust
- The Spring Edition of La Voz could be improved by describing a plan to close the current \$5 billion funding gap after Chairman Maxon raises the issue in his letter to members
- Recent actions by the Executive Director and General Counsel reveal cause for investigation whether they are qualified for their roles and responsibilities
- The Board needs a concrete plan to close the \$5 billion funding gap in order to meet its fiduciary duties under the law and remain shielded from liability

The current funding gap is large (\$5 billion or 25% of obligations) and persistent (more than 10 years). It is time for change. The NMPERA Board is responsible for overseeing that change.

Here is a two-step plan: Ask NMPERA Staff or investment service providers to improve investment results during a six-month heightened monitoring period. If they fail to improve investment results in six months, investigate then replace them, if appropriate.

If the replacement strategy does not yield near term results, the NMPERA Board could self-direct meaningful amounts of NMPERA assets (direct investments in, say, pre-approved funds).

This document and its author are protected by fiduciary duties and whistleblowing laws.

A handwritten signature in blue ink, appearing to be "Lopez".

Applicable State Law

The New Mexico State Statute states the following:

Universal Citation: NM Stat § 45-7-610 (1996 through 1st Sess 50th Legis)

45-7-610. Delegation of investment and management functions.

- A. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:
 - (1) selecting an agent;
 - (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
 - (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
- B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
- C. A trustee who complies with the requirements of Subsection A of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

Analysis of State Law

The Spring Edition of La Voz mis-stated the law. The Spring Edition of La Voz stated that the NMPERA Board was fulfilling its fiduciary duty by delegating responsibility to PERA staff.

The Spring Edition of La Voz failed to state that the NMPERA Board remained ultimately responsible for closing PERA's \$5 billion funding gap.

To maintain the public trust, a notice should be sent immediately to all subscribers of the Spring Edition of La Voz to correct this one of two material misstatements of the law. Consider the following language as a place for the NMPERA Board to start drafting a correction:

“Correction: The Spring Edition of La Voz stated that the NMPERA Board had delegated responsibilities to meet PERA funding obligations. This is a mis-statement of the law. Under State law, the NMPERA Board may delegate investment and management functions in its discretion. The NMPERA Board may not delegate its responsibilities to close PERA's current \$5 billion funding gap.”



Circumstances: Under State law, the NMPERA Board, as trustee of PERA assets, is held to the standard of “prudent trustee of comparable skills could properly delegate under the circumstances” when delegating investment and management functions.

The circumstances currently faced by the NMPERA Board is a persistent (more than 10 years) and large (25% or \$5 billion) funding gap.

The Spring Edition of La Voz raises the issue of NMPERA’s underfunded status. To maintain the public trust, the Spring Edition of La Voz could be improved to describe concrete steps the NMPERA Board plans to take to close the current \$5 billion funding gap.

It is unclear whether the NMPERA Board or Staff have a plan to close the current \$5 billion funding gap. The Budget and Staff presentations merely report the underfunding obligation and estimate that it will take 46 years to close the funding gap. No document presented to the NMPERA Board includes a plan with concrete steps to close the \$5 billion funding gap.

To fulfill its fiduciary duties under the law, the NMPERA board should clearly document how it takes current underfunding circumstances into account when delegating and monitoring investment and management functions.

Revocation: Under State law, the NMPERA Board, as trustee of PERA assets, may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The law uses the term “may” delegate. Delegation under applicable law is discretionary. If the legislature had intended that delegation be mandatory, it would have used alternative terms such as “shall” or “will” or “must.”

Discretionary delegation is revocable. Any function that may be delegated may also be revoked.

The Spring Edition of La Voz could be improved to clarify that delegation of investment and management functions is revocable.

Under the law, the NMPERA Board could terminate the employment of any individual, group or entity that receives delegation of investment and management functions (directly or indirectly).

Notwithstanding NMPERA Board and procedures, the NMPERA Board at all times retains responsibility under the law to (1) revoke all or a portion of delegated functions, when appropriate and (2) fire any Staff member or investment service provider for cause.

Minutes of the NMPERA Board meetings indicate that NMPERA Executive Director and General Counsel have cause for investigation as to whether they are qualified.

Acts that show a lack of qualification by the NMPERA Executive Director include exceeding authority by submitting the 2018 NMPERA Budget to the State Legislature without prior review and approval by the full NMPERA Board, abusing discretion by subjectively authorizing out-of-state education by NMPERA Board members, impeding the NMPERA Board in its duties by distracting the Board with resolutions to censure two Board Members (including the author).



Acts that show a lack of qualification by the NMPERA General Counsel include legal analysis and review of communications to and from the NMPERA Board for matters described below. Qualified legal counsel would have helped the NMPERA Board avoid making decisions based on mis-application of State law and source solutions to close the current \$5 billion funding gap (investing is part of the job description of both the Executive Director and General Counsel – both are accountable to the NMPERA Board for the current \$5 billion funding gap).

Omissions that show cause for investigating the qualification of NMPERA Executive Director and General Counsel include the following:

1. **Failure to supervise:** The NMPERA Executive Director is responsible for overseeing investment and management functions delegated by the NMPERA Board. Staff misconduct reflects on the NMPERA Executive Director and his or her ability to oversee staff. Recently, NMPERA Staff have impeded the NMPERA Board.
 - a. Examples of distractions of NMPERA Board Members by Staff include fostering board conflict with two unjust censure resolutions, failing to detect material mis-statements of the law in the Spring Edition of La Voz and failing to take into account an independent investigation in a resolution to censure Member French.

Note the report of Universal Investigations found no violation of NMPERA policies or procedures – after taking into account that Board pre-approval and disclosure is not required for out-of-state education unless and until a NMPERA Board member intends to request expense reimbursement. Censure is not appropriate without violation of law, policies or procedures. Still, the General Counsel persisted with a censure resolution without evidence of violations.
 - b. Examples of mistreatment of NMPERA Board members by NMPERA senior Staff include failing to object to illegal segregation at NMPERA Board meetings and committees, failing to maintain frank and collegial communications between the NMPERA Board and Staff, failing to timely respond to good faith information requests by NMPERA Board Members and unprofessional conduct during NMPERA Board meetings (nameplates, segregation).
 - c. Examples of misconduct by NMPERA senior Staff against NMPERA members include the Spring Edition of La Voz, which contains material mis-statements of law and omits a plan to close the \$5 billion funding gap after raising the issue.
2. **Breach of duty:** Under State law, “in performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.” Failing to supervise is a failure to exercise reasonable care and a violation of State law. Failing to submit the 2018 NMPERA Budget to the NMPERA Board before presenting it to the State legislature, misconduct and impeding the NMPERA Board are failures to comply with the terms of the delegation and other violations of State law. Neither the Executive Director nor the General Counsel have facilitated actions to close the current \$5 billion funding gap in breach of the investment parts of their job descriptions.



These reasons and more provide cause for investigating the NMPERA Executive Director and General Counsel as to their respective qualifications.

Monitoring:

Under State law, if the NMPERA Board delegates investment and management functions, the NMPERA Board must periodically review the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

The NMPERA Board should review policies, procedures and controls to ensure compliance with State law. The NMPERA Board should reconsider recent NMPERA Board resolutions in light of the lack of qualification by NMPERA's Executive Director and General Counsel.

NMPERA Board resolutions to eliminate Requests for Proposals in the sourcing of investment service providers and to eliminate NMPERA Board access to investment service providers both during the selection and monitoring processes impede Board duties under State law. The NMPERA Board cannot reasonably monitor delegations if it does not have direct access to the investment service provider agents that receive such delegations.

NMPERA Staff have not historically invested NMPERA assets. All investment functions have been 100% outsourced and yet the large funding gap has persisted for more than a decade.

The NMPERA Board may want to manage a portion of NMPERA assets at the Board level to ensure the Board's qualification to monitor remaining delegations.

The letter from the NMPERA Board Chair in the Spring Edition of La Voz, which was not reviewed by the NMPERA Board, contained a second material misstatement of law as well as a material misstatement of fact and should also be corrected.

The letter stated in part, "some board members' insistence on traveling around the country to visit the offices of potential investment firms rather than leaving this role to our professional investment staff and independent consultants. It appeared less driven by prudent due diligence than by a personal travel bug." This statement materially mis-states the law and is not factual.

State law requires periodic monitoring by the NMPERA Board of delegated investment and management functions. "Leaving this role" to others implies the NMPERA Board intends to shirk its duties under State law to periodically monitor delegations. The NMPERA Board should issue a correction to recipients of the Spring Edition of La Voz to maintain the public trust.

Consider the following language as a place for the NMPERA Board to start drafting a correction:

Correction: The Spring Edition of La Voz stated an opinion that the role of on-site due diligence of investment service providers should be left to non-board members. Under State law, the NMPERA Board shall (mandatory) monitor any delegation of investment and management functions. Site visits remain a reasonable means of monitoring both NMPERA Staff and investment service providers."



Due diligence site visit expenditures indicate that various NMPERA Board members traveled, not only the Board members that are being singled out for censure.

NMPERA expenditure records indicate the following travel by NMPERA Board members for on-site due diligence of investment service providers: Expenditures for Fiscal Year 2012 - Susan Biernacki, Jackie Kohlash (twice), and Annette Martinez-Varela. Expenditures for Fiscal Year 2013 - Roman Jimenez, Susan Biernacki, and Annette Martinez Varela. Expenditures for Fiscal Year 2014 - Patricia French, Susan Biernacki, Paula Fisher and Daniel Esquibel. The NMPERA Board or Staff could complete a similar analysis for fiscal years 2015 – 2017.

The Spring Edition of La Voz should be corrected factually to maintain the public trust. NMPERA Board members did not have the travel bug. NMPERA Board members that conducted investment service provider due diligence traveled to meet fiduciary duties.

Conclusion Under State Law:

The Spring Edition of La Voz contains at least two material misstatements of State law (responsibility and monitoring) and one material mis-statement of fact (travel bug).

All 90,000 recipients of the Spring Edition of La Voz should be notified immediately of necessary corrections to maintain the public trust.

Separately, the NMPERA Executive Director and General Counsel have provided cause for investigation as to whether they are qualified for their jobs.

They should be investigated to (1) limit NMPERA Board liability for failing to use reasonable care in selecting and monitoring its agents (including Staff and investment service firms) and (2) avoiding impediments and distractions to the Board for closing the \$5 billion funding gap.

NMPERA's current \$5 billion funding gap has persisted during the Executive Director and General Counsel's tenures. The \$5 billion funding gap persists in spite of two favorable developments: SB27 lowered the liability and NMPERA retirees and the employees gave up the equivalent of 1% pay to lower the liability (COLA benefits).

The NMPERA Board should take steps to close the current \$5 billion funding gap. Such steps should involve a comprehensive analysis of investment and management functions in light of NMPERA's large and persistent funding gap. Everything should be on the table, including the possibility of direct investment by the NMPERA Board through low-cost index funds or alternatives that bring expected returns greater than NMPERA's 7.25% target rate of return.

