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INVESTED IN TOMORROW.

TO: Paula Fisher, Rules and Administration Committee Chair
Diana Rosales Ortiz, Rules and Administration Committee Vice Chair
Members of the Rules and Administration Committee
Members of the Board of the Public Employees Retirement Association
Greg Trujillo, Executive Director

FROM: Anthony Montoya, General Counsel

RE: 2023/2024 PERA Proposed Rule Changes: Vacancy on the Board 2.80.200.30;
Election of Retired Board Members 2.80.200.60; Election of Non-Retired Board
Members 2.80.200.70; Elections 2.80.200.80

DATE: October 20, 2023

Proposed Amendments to Organization and Operation of the Public Employees Retirement Board - Rule 2.80.200 NMAC

This memo is provided to recommend potential amendments to Rule 2.80.200 which govern the Organization and Operation of the Public Employees Retirement Board (“the Board”). These recommendations are solely to assist in developing and drafting rule amendments that are technically accurate. In response to proposals to amend the PERA Rules to disqualify candidates for election or appointment to a Board Member position if a candidate has previously served on the Board and has been subject to three or more formal disciplinary actions or has been previously removed from the Board, staff recommends changes to Rule 2.80.200.60 for the Election of Retired Board Members and corresponding changes to Rule 2.80.200.70 for the Election of Non-Retired Board Members.

Additionally, staff recommends technical updates to Rule 2.80.200.30 to treat the removal of a Board Member as a vacancy on the Board and to Rule 2.80.200.80 to clarify that the Board may also exercise authorities granted to the election committee. Included with this memo is the

proposed schedule for the rulemaking, a copy of the proposed Notice of PERA Rulemaking, and the proposed amendments to the rules with additions underlined and deletions in strikethrough.

Disqualifying Factors for Candidates for Election or Appointment to the Board - Rules 2.80.200.60 and 2.80.200.70 NMAC

The proposed amendments to Rules 2.80.200.60 and 2.80.200.70 provide certain factors that would disqualify a candidate for election or appointment to the Board. Additionally, technical changes are recommended to update the rules for clarity.

Rule 2.80.200.60, which applies to the election of retired Board Members, would be amended to rewrite Subsection F in its entirety and add the new Paragraphs (1) and (2) which would state:

~~“F. [Only retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible to participate in the election of retired board members.]~~ Notwithstanding the provisions of Subsection B of this section, a candidate shall be ineligible for election to a retired board member position if the candidate previously served on the board, representing any membership group, and during that previous tenure the candidate was:

- (1) subject to three or more separate board resolutions of reprimand and censure; or
- (2) removed from the board.”

Since the proposed deleted language in Subsection F is repetitive to language in Subsection B of this Rule, the repetitive language is deleted and Subsection F is used as the location for the proposed amendments. The new language provides factors that would disqualify a person from eligibility to be a candidate in an election for a retired board member position. In addition to the new language above, amendments are proposed for Subsections B, C, D, and E to cross-reference the new Paragraph (2), ensure those changes are able to be administered, and to make explicit reference to the qualifying term “eligible” in reference to candidates throughout (see proposed amendments).

Rule 2.80.200.70, which applies to the election of non-retired Board Members, would be amended to enact changes that are identical in purpose, however, the section is currently structured

differently and requires the new language to be organized to fit the structure of that section. A new Paragraph (2) to Subsection A of Rule 2.80.200.70 would be added that states:

“(2) Notwithstanding the provisions of Paragraph (1) of this subsection, a candidate shall be ineligible for election to a non-retired board member position if the candidate previously served on the board, representing any membership group, and during that previous tenure the candidate was:

(a) subject to three or more separate board resolutions of reprimand and censure; or

(b) removed from the board.”

Similar to the proposed amendments relating to retired Board Members, language is proposed to be added to Paragraphs (1), (3), (4), (5) and (6) of Subsection A of Rule 2.80.200.70 to cross-reference the new Paragraph (2), ensure those changes are able to be administered, and to make explicit reference to the qualifying term “eligible” throughout. Additionally, Paragraph (7) of Subsection A is rephrased to ensure clarity for the existing practice that members only vote in a board election for their membership group. This is not a necessary change in the Retired Board Member Election Rule since that is a single membership group.

These rule changes would have the effect of disqualifying any candidate from running, being elected, or being appointed to the Board if that candidate had previously served on the Board, and during that time, was subject to either three or more separate formal reprimands or was removed. An individual who is disqualified under these rules would not be eligible to request nominating petitions or be placed on a ballot for election or to be appointed to the Board. These provisions are specifically related to elections and would not result in the removal of a current board member but would determine eligibility in future elections.

Technical Updates to Rules 2.80.200.30, 2.80.200.60, 2.80.200.70 and 2.80.200.80 NMAC

Staff recommends that certain technical changes be made to Rule 2.80.200. It is proposed that Rule 2.80.200.30 be changed to reference the vacancy procedure for a removal action of the Board. The process and procedures for removal are provided within Board Policies and Procedures, however, the rule that addresses vacancies on the Board should be consistently applied. It is proposed that Rule 2.80.200.30(A) is amended to read:

“A. In the event any member of the PERA board retires from his or her job, resigns from the board, is removed from the board or dies, except the ex-officio members of the board, that member shall be considered to have resigned from the board and the board shall, by resolution, declare that office vacant as of the date of the adoption of such resolution. Such resolution shall be adopted within 30 days after the board member's retirement, resignation, removal or death. Members of the retirement board shall serve until their successors have qualified.”

Further, to mirror the language in statute relating to the quorum requirements necessary to fill vacancies, it is proposed that Rule 2.80.200.30(D) is amended to read:

“D. Any vacancy of member, except ex-officio member, occurring on the board shall be filled by the remaining board members, [~~even though a quorum not be present~~] without requirement that a quorum be present, at a regularly scheduled board meeting or special board meeting within 90 days after the adoption of the resolution declaring the vacancy. The member selected to fill the vacancy shall be selected from the membership group, whether state, county or non-county municipal or retired member, which experienced the vacancy. If a vacancy in the municipal membership group is that of a county member, the replacement member shall be a county employee. The selected member must meet all eligibility requirements of elected members and shall be appointed to serve for the remainder of the vacated term.”

This change to Subsection D causes no change to the administration of the current rule for establishing quorum but guarantees consistency with statute to prevent any argument or confusion that a distinction between the two may exist. The change also provides the Board with flexibility to consider filling a vacancy at a special board meeting and also clarifies that appointed members meet the same requirements as elected members.

Under current rule, the Board may choose to form an Election Committee to administer an election. Alternatively, the Board may hire an independent contractor to perform this same function. In recent history, an independent contractor has been utilized by the Board. This is permissible under rule, however, there are certain provisions in the rule that provide an authority only to the Election Committee without taking into consideration that the Board has the discretion

to not form this committee. Amendments are proposed to Rules 2.80.200.60(C)(3) and (D), 2.80.200.70(4) and (5) and 2.80.200.80(B) to clarify that those powers may also be exercised by the Board. The proposal amends the language in those sections to read “election committee or board.”

As stated above, these recommendations are solely to assist in developing and drafting rule amendments that are technically accurate. In sum, the proposed amendments would serve to provide factors that would disqualify a candidate from election or appointment to the Board, to clarify that members can only vote in the board election for their membership group, to outline the vacancy procedure for a removal action from the Board, and to clarify that those powers exercised by the election committee may also be exercised by the Board.

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 200 ORGANIZATION AND OPERATION OF THE PUBLIC EMPLOYEES RETIREMENT BOARD

2.80.200.1 ISSUING AGENCY: Public Employees Retirement Association (PERA), 33 Plaza La Prensa, Santa Fe, New Mexico 87507.

[2.80.200.1 NMAC - Rp, 2.80.200.1 NMAC, 12/30/2015]

2.80.200.2 SCOPE: This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board and the association under the Public Employees Retirement Act.

[2.80.200.2 NMAC - Rp, 2.80.200.2 NMAC, 12/30/2015]

2.80.200.3 STATUTORY AUTHORITY: This rule is authorized by Sections 10-11-130, 10-11A-4, 10-12B-3, 10-12C-3 NMSA 1978, as amended.

[2.80.200.3 NMAC - Rp, 2.80.200.3 NMAC, 12/30/2015]

2.80.200.4 DURATION: Permanent.

[2.80.200.4 NMAC - Rp, 2.80.200.4 NMAC, 12/30/2015]

2.80.200.5 EFFECTIVE DATE: December 30, 2015, unless a different date is cited at the end of a section.

[2.80.200.5 NMAC - Rp, 2.80.200.5 NMAC, 12/30/2015]

2.80.200.6 OBJECTIVE: The objective of this rule is to establish procedures for the organization and operation of the retirement board.

[2.80.200.6 NMAC - Rp, 2.80.200.6 NMAC, 12/30/2015]

2.80.200.7 DEFINITIONS: [RESERVED]

2.80.200.8 - 9 [RESERVED]

2.80.200.10 RULES AND REGULATIONS:

A. Except as otherwise provided in the Public Employees Retirement Act and rules and regulations periodically adopted in accordance therewith, the board may provide for its organization, operation and procedures by vote of the board at any meeting of the board.

B. The board may promulgate rules and regulations for the administration of the Public Employees Retirement Act, Judicial Retirement Act, Magistrate Retirement Act, Volunteer Firefighters Retirement Act and Deferred Compensation Act.

(1) Prior to the adoption, amendment or repeal of any rule, the board shall, at least 30 days prior to its proposed action:

(a) publish notice of its proposed action in a newspaper with a general statewide circulation; the notice shall:

(i) give the time and place of any public hearing and state the manner in which data, views or arguments may be submitted to the board by any interested person;

(ii) describe the substance of the proposed action, or state the subjects and issues involved;

(iii) include any additional matter required by any law, together with specific reference to the statutory authority under which the rule is proposed; and

(b) afford all interested persons reasonable opportunity to submit data, views or arguments orally or in writing; if the board finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing; the board shall consider fully all written and oral submissions addressing the proposed rule; upon adoption of a rule contested at hearing or otherwise, the board shall issue a concise statement of its principal reasons for adoption of the rule; all persons heard or represented at any hearing, or who submit any writing to be considered in connection with the proposed rule, shall promptly be given a copy of the rule, by mail or otherwise, if such persons so request in writing.

(2) If the board finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the soundness of the fund or general welfare of the association, or if the board for good cause finds that observance of the requirements of notice and public hearing would be contrary to the interests of the association, the board may dispense with such requirements and adopt, amend or suspend the rule as an emergency. The board's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency rule, amendment or suspension. No emergency rule, amendment or suspension shall remain in effect for longer than 60 days, unless notice shall be given within 15 days of the adoption of the emergency rule and a hearing held as provided in this section within 90 days of the notice.
[2.80.200.10 NMAC - Rp, 2.80.200.10 NMAC, 12/30/2015]

2.80.200.11 ACTUARIAL ASSUMPTIONS AND USE OF TRUST FUND:

A. Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, the assumptions shall be specified by the board in a manner that precludes employer discretion.

B. No part of the corpus or income of the fund may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries.

C. The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.
[2.80.200.11 NMAC - Rp, 2.80.200.11 NMAC, 12/30/2015]

2.80.200.12 - 19 [RESERVED]

2.80.200.20 OFFICERS:

A. At the first regular meeting of each calendar year, the board shall elect a chair and a vice-chair. The duties of the officers shall include the following.

(1) The chair shall preside at all regular and special meetings of the board.

(2) The vice-chair shall serve as chair in the absence of the chair.

B. In the absence of the chair and vice-chair, the board may elect a temporary chair to preside at a meeting from which both officers are absent.
[2.80.200.20 NMAC - Rp, 2.80.200.20 NMAC, 12/30/2015]

2.80.200.21 BOARD TRAINING AND EDUCATION:

A. New board members shall attend a new board member orientation within two months of being elected or appointed to office. New board member orientation shall be provided by PERA staff and shall include fiduciary responsibility, investing principles, an actuarial primer and an overview of the operations of the association.

B. Each board member shall annually certify his or her compliance with the statutory requirements of Subsection F of Section 10-11-133 NMSA 1978 on the form prescribed by the association on or before December 31st of each calendar year.
[2.80.200.21 NMAC - Rp, 2.80.200.21 NMAC, 12/30/2015]

2.80.200.22 - 29 [RESERVED]

2.80.200.30 VACANCY ON THE BOARD:

A. In the event any member of the PERA board retires from his or her job, resigns from the board, **is removed from the board** or dies, except the ex-officio members of the board, that member shall be considered to have resigned from the board and the board shall, by resolution, declare that office vacant as of the date of the adoption of such resolution. Such resolution shall be adopted within 30 days after the board member's retirement, resignation, **removal** or death. Members of the retirement board shall serve until their successors have qualified.

B. In the event any member of the PERA board, except the ex-officio members of the board, ceases employment with an affiliated public employer, and is not reemployed by an affiliated public employer from the same membership (state, county or non-county municipal) group from which that member was elected within 30 days, that member shall be considered to have resigned from the board. For purposes of 2.80.200.30 NMAC, the term "ceases employment" shall include leave without pay status that extends for more than 12 weeks.

C. The resolution declaring the vacancy shall be publicized immediately in conjunction with a notice inviting eligible individuals to apply for appointment to the position within 30 days of the publication of notice of vacancy. Publication shall be, at the minimum, by special notice to employees in the affected membership group

through their employers. The board shall select the new member from among the interested persons who apply pursuant to the publication of the notice of vacancy. If no applications are received, the board shall entertain nominations by the members present.

D. Any vacancy of member, except ex-officio member, occurring on the board shall be filled by the remaining board members, ~~[even though a quorum not be present]~~ without requirement that a quorum be present, at a regularly scheduled board meeting or special board meeting within 90 days after the adoption of the resolution declaring the vacancy. The member selected to fill the vacancy shall be selected from the membership group, whether state, county or non-county municipal or retired member, which experienced the vacancy. If a vacancy in the municipal membership group is that of a county member, the replacement member shall be a county employee. The selected member must meet all eligibility requirements of elected members and shall be appointed to serve for the remainder of the vacated term.

[2.80.200.30 NMAC - Rp, 2.80.200.30 NMAC, 12/30/2015; A, XX/XX/XXXX]

2.80.200.31 - 39 [RESERVED]

2.80.200.40 BOARD MEETINGS:

A. The board shall hold regular meetings on the last Thursday of each month, unless otherwise established by resolution of the board. The board may establish by resolution a different meeting schedule for regular meetings of the board.

B. A board member may participate in a board or committee meeting by means of a conference telephone or other similar communications equipment after receiving written approval by the board chair or committee chair when it is otherwise difficult or impossible for the member to attend the meeting in person. Participation by such means shall constitute presence in person at a meeting. The authorization of a board member to attend a board or committee meeting by means of a conference telephone or other similar communications equipment must be communicated to all board members by the approving board chair or committee chair. Each member participating must be identified prior to speaking and, if participating virtually, shall remain on camera throughout the meeting. All participants shall be able to hear any other participant who speaks during the meeting at the same time, and members of the public shall be able to hear any member who speaks during the meeting.

C. A majority of the board members shall constitute a quorum at any meeting of the board and each attending member, including the chair, shall be entitled to one vote on each issue.

D. No "proxy" votes shall be allowed.
[2.80.200.40 NMAC - Rp, 2.80.200.40 NMAC, 12/30/2015; A, 01/31/2023]

2.80.200.41 - 49 [RESERVED]

2.80.200.50 COMMITTEES:

A. The chair shall appoint no more than six board members to each of the following standing committees: rules and administration, audit and budget, legislative, investments, deferred compensation, investment plan, and governance. The disability review committee shall have at least three but no more than five board members. The chair of the board shall appoint the chair of each committee. Though the board shall have standing committees, the board chair reserves the right to cancel any committee meeting and allow the entire board to discuss and act on matters that may be within the subject matter of standing committees.

(1) The rules and administration committee shall consider and recommend to the board new rules and amendments to or repeal of existing rules governing the organization and operation of the board and the association. Administrative matters requiring specific direction from the board may also be considered by the committee.

(2) The audit and budget committee shall provide policy assistance to the board and the executive director of PERA in fulfilling PERA's responsibilities for accounting, auditing, budgeting, and the quality and integrity of the financial reports of the association.

(3) The legislative committee shall consider and recommend to the board proposals for new statutes and amendments to or repeal of existing statutes. The committee shall also monitor the introduction and progress of proposed legislation affecting the board or association and report this information to the board.

(4) The disability review committee is described in 2.80.1000.20 NMAC.

(5) The investment committee shall review and monitor the administration of the investment policy adopted by the board.

(6) The deferred compensation committee shall review and monitor the administration of the deferred compensation plan investment policy adopted by the board.

(7) The governance committee shall develop, review and monitor compliance with the board's policies and procedures, code of conduct, and board complaint procedure and recommend to the board proposed board disciplinary actions.

B. The chair, with the advice and consent of the board, may appoint an election committee to consist of nine members of the association: four members from state departments, two members from non-county municipal employers, one member from a county employer and two retired members.

(1) The election committee shall serve until replaced by the chair and shall receive no compensation other than that authorized by the Per Diem and Mileage Act.

(2) The duties of the election committee are described in 2.80.200.60, 2.80.200.70 and 2.80.200.80 NMAC.

C. From time to time, the board may authorize, and the chair may appoint, such ad hoc committees as the board finds necessary.

D. Board members appointed to committees shall adhere to the standards set forth in and be subject to the enforcement provisions of the New Mexico Governmental Conduct Act.
[2.80.200.50 NMAC - Rp, 2.80.200.50 NMAC, 12/30/2015; A, 12/28/2021]

2.80.200.51 - 59 [RESERVED]

2.80.200.60 ELECTION OF RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of retired board member. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

B. ~~Any~~ Except as provided in Subsection F of this section, only a retired member who is receiving a disability or normal retirement pension under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act ~~is~~ shall be eligible for election to a retired board member position.

C. Nominating petitions shall be signed only by retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act. To be eligible for inclusion on the ballot, a candidate must have a minimum of 50 valid nominations by retired members and the candidate shall otherwise be eligible as provided in this section for the retired board member position. A valid nomination shall include a signature, legible printing of the retiree's name, and one of the following:

- (1) the last four digits of the retiree's social security number;
- (2) the retiree's date of birth;
- (3) the retiree's PERA identification number.

A nomination that does not include at least one of these elements ~~may~~ shall not be counted. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. A retired member may sign more than one nominating petition for different candidates. The five eligible candidates with the highest number of nominations shall be included on the ballot and the other or others shall be eliminated. The names of the five retired members receiving the highest number of nominations shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee or board shall determine the names and order in which they are placed on the ballot by lottery or similar method.

D. In the event any nominee is unable or unwilling to accept a nomination or is otherwise ineligible for the position, that nominee's name shall be removed from the ballot and the resulting vacancy on the ballot shall not be filled. If ~~the inability or unwillingness~~ a nominee who is unable or unwilling to accept a nomination ~~occurs after the ballots have been printed~~ or a nominee who is ineligible for election is included on the ballots, the election committee or board shall treat all votes cast for that nominee as void.

E. If only one eligible retiree is nominated for a retired board member position, the election shall be cancelled and that retiree shall automatically be declared the winner for the retired board member position pursuant to 2.80.200.80 NMAC.

F. ~~[Only retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible to participate in the election of retired board members.]~~ Notwithstanding the provisions of Subsection B of this section, a candidate shall be ineligible for election to a retired board member

position if the candidate previously served on the board, representing any membership group, and during that previous tenure the candidate was:

- (1) subject to three or more separate board resolutions of reprimand and censure; or
- (2) removed from the board.

G. The campaign contribution limit of \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four year term retired board member election.

[2.80.200.60 NMAC - Rp, 2.80.200.60 NMAC, 12/30/2015; A, 3/14/2017; A, 12/28/2021; A, XX/XX/XXXX]

2.80.200.61 - 69 [RESERVED]

2.80.200.70 ELECTION OF NON-RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of non-retired board member. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

(1) ~~[Candidates nominated for any non-retired board member position shall be]~~ Except as provided in Paragraph (2) of this subsection, only non-retired, vested members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible for election to a non-retired board member position. ~~[(2)]~~ Only state members, including members under the Judicial Retirement Act or the Magistrate Retirement Act, may nominate state member candidates for state board member positions. Only county members may nominate county member candidates for the county board member position. Only non-county municipal members may nominate non-county municipal member candidates for the ~~[remaining]~~ non-county municipal board member positions.

(2) Notwithstanding the provisions of Paragraph (1) of this subsection, a candidate shall be ineligible for election to a non-retired board member position if the candidate previously served on the board, representing any membership group, and during that previous tenure the candidate was:

- (a) subject to three or more separate board resolutions of reprimand and censure; or
- (b) removed from the board.

(3) To be eligible for inclusion on the ballot, a candidate must ~~[have]~~ provide nominating petitions to PERA with a minimum of 150 valid nominations of non-retired PERA members from the candidate's membership group ~~[on his or her nominating petition]~~ and the candidate shall otherwise be eligible as provided in this section for that board member position. A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and one of the following:

- (a) the last four digits of the member's social security number;
- (b) the member's date of birth; or
- (c) the member's PERA identification number.

A nomination that does not include at least one of these elements ~~[may]~~ shall not be counted. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. A member may sign more than one nominating petition for different candidates.

(4) The five eligible candidates with the highest number of nominations for each non-retired position shall be included on the ballot and the other or others shall be eliminated. The names of the five non-retired members receiving the highest number of nominations for a position shall be placed on the election ballot in descending order according to the number of signatures received. In case of a nominating tie, the election committee or board shall determine the names and order in which they are placed on the ballot by lottery or similar method.

(5) In the event any nominee is unable or unwilling to accept the nomination, ~~[his or her]~~ or is otherwise ineligible for the position, that nominee's name shall be removed from the ballot and the vacancy on the ballot shall not be filled. If ~~[such a vacancy occurs after the ballots have been printed]~~ a nominee who is unable or unwilling to accept a nomination or a nominee who is ineligible for election is included on the ballots, the election committee or board shall treat all votes cast for that candidate as void.

(6) If only one eligible member is nominated for a non-retired board member position, the election shall be cancelled and that member shall automatically be declared the winner for the non-retired board member position pursuant to 2.80.200.80 NMAC.

(7) All members of record of the membership group for which the election is held shall be eligible to receive a ballot as provided in ~~[Subparagraph (a) of Paragraph (8) below, except that only county~~

~~members shall vote in elections for the county member position, and shall not be eligible to vote in elections for non-county municipal positions]~~ Paragraphs (8) and (9) of this subsection and members shall only be eligible to vote in those elections in which they are eligible to receive a ballot. The applicable membership group for any member who is no longer a currently employed, contributing employee of an affiliated public employer shall be determined as of the last date on which the member was a currently employed, contributing employee of an affiliated public employer.

(8) For purposes of the election of non-retired board members, “member of record” shall mean the following:

(a) all persons listed in PERA electronic membership history records as members, including members covered under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act, no more than 60 days prior to the date of mailing ballots;

(b) all persons who have filed with PERA a valid application for membership form 60 days or more prior to the date of mailing ballots;

(c) while members of record shall qualify to receive a ballot, in the case of those new members listed in Subparagraph (b) of Paragraph (8) of Subsection A of 2.80.200.70 NMAC, a written request for a ballot must be made to PERA.

(9) For purposes of the election of non-retired board members:

(a) ballots shall be mailed to all non-county municipal members of record in the case of an election of a non-county municipal board position;

(b) ballots shall be mailed to all county municipal members of record in the case of an election of the county municipal board position; and

(c) ballots shall be mailed to all state members of record in the case of an election of a state board position.

B. The campaign contribution limit of \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four-year term non-retired board member election.

[2.80.200.70 NMAC - Rp, 2.80.200.70 NMAC, 12/30/2015; A, 3/14/2017; A, 12/28/2021; A, XX/XX/XXXX]

2.80.200.71 - 79 [RESERVED]

2.80.200.80 ELECTIONS: The call of the annual meeting and secret election ballots shall be mailed at least 30 days prior to the annual meeting of the association. Mailed ballots shall be returned to a designated United States post office locked box and picked up by the election committee or an independent contractor hired by PERA to assist with the election. To be counted, ballots must be returned to the designated United States post office locked box by 12:00 noon on the date set by the association. The call of the annual meeting and secret election ballots may also be made available at least 30 days prior to the annual meeting of the association online via a secure website maintained by an independent contractor hired by PERA to assist with the election or by another method specified in the resolution adopted by the board each January. To be counted, online ballots or votes cast by another approved method must be received by 12:00 noon on the date set by the association. An independent contractor hired by PERA to assist with the election shall assign unique identifiers to members to prevent voting more than one ballot per eligible member.

A. Each ballot shall contain an affirmation of the member’s eligibility to vote.

B. Ballots shall be self-proving and shall be counted by the election committee or an independent contractor hired by PERA to assist with the election. The candidate receiving the greatest number of votes shall be declared the winner for each position. In the event of a tie, the election committee **or board** shall select by lottery or similar method the name of the winner. The election committee or an independent contractor hired by PERA to assist with the election shall report the results of the election to the membership at the annual meeting.

C. Members whose ballots have not been delivered to them may request and receive another ballot if the original ballot is returned by the United States post office undelivered to PERA or an independent contractor hired by PERA to assist with the election prior to the close of the election. Members whose ballots have been mutilated or spoiled may request and receive another ballot when, prior to the close of the election, the original mailed ballot is returned by the member to PERA or an independent contractor hired by PERA to assist with the election. In addition, PERA or an independent contractor hired by PERA to assist with the election may assign unique identifiers to members and issue replacement ballots using procedures to prevent voting more than one ballot per eligible member.

D. If the election committee or an independent contractor hired by PERA to assist with the election recommends for good cause that the results of the election be invalidated, and the board adopts such

recommendation, a new election shall be held as soon as possible thereafter and the annual meeting at which the election results are announced shall be continued until completion of the new election.

E. Insignificant departures from the requirements set forth in these regulations pertaining to the conduct of elections shall not invalidate the election unless the results of the election are proven to have been substantially affected.

F. A member shall be considered to be “qualified” for office pursuant to Subsection D of Section 10-11-130 NMSA 1978 when the board has accepted the election results and the newly-elected member has been sworn into office.

[2.80.200.80 NMAC - Rp, 2.80.200.80 NMAC, 12/30/2015; A, 3/14/2017; A, XX/XX/XXXX]

2.80.200.81 - 89 [RESERVED]

2.80.200.90 BUILDING AND LAND USE: Restrictions on building and land use shall be provided for by the executive director as needed subject to the advice and consent of the board.

[2.80.200.90 NMAC - Rp, 2.80.200.90 NMAC, 12/30/2015]

HISTORY of 2.80.200 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: PERA 68-1, (Rule No. 2) Election of Board Members, filed on 7/8/1968; PERA 69-1, (Rule No. 2) Election of Board Members, filed on 6/17/1969; Rule 200.00, Organization and Operation of the Public Employees Retirement Board, filed on 10/4/1979; PERA Rule 200.00 Organization and Operation of the Public Employees’ Retirement Board, filed on 11/19/1981; PERA Rule 200.00, Organization and Operation of the Public Employees’ Retirement Board, filed on 7/1/1987; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 10/21/1988; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7/1/1991; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 7/1/1993; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 11/1/1994; PERA Rule 200, Organization and Operation of the Public Employees Retirement Board, filed on 12/1/1995.

History of Repealed Material:

2 NMAC 80.200, Paragraph 60.5, 60.6, 60.7 - Repealed, 11/15/1997.

2 NMAC 80.200, Paragraph 70.2.1, 70.2.2 - Repealed, 11/15/1997.

2 NMAC 80.200, Paragraph 70.2, 70.2.3, 70.2.4, 70.2.5, 70.2.6, 70.2.7, 70.2.8 - Repealed, 12/15/1999.

2.80.200 NMAC, Organization and Operation of the Public Employees Retirement Board, filed 12/28/2000 - Repealed effective 12/30/2015.

PROPOSED RULEMAKING TIMELINE - ELECTION RULE

Draft rule amendments, Notice of Proposed Rulemaking (NOPR)	October 2023
Draft rules, NOPR and Memo to Rules and Administration Committee (RAC) and to Board re rule amendments	October 20, 2023
Agenda for RAC and Board meeting posted	October 23, 2023
Draft rule amendments and NOPR presented at RAC and Board meeting	October 26, 2023
Board action taken by vote on initiating rulemaking	October 26, 2023
Finalize draft rule amendments	before November 7, 2023
Proposed rule and notice of rulemaking submitted to NM Register	November 7, 2023
Proposed rule and notice of rulemaking published in NM Register	November 19, 2023
Proposed rule and notice of rulemaking *also posted on agency website, sunshine portal, PERA offices, and as otherwise required	November 19, 2023
Public comment period	Starts on November 19, 2023
Posting of written comments	Starts on November 19, 2023
Next Board Meeting	December 12, 2023
Public hearing held by RAC	On or after January 9, 2024
Close of rulemaking record	After public hearing
Compile rulemaking record	After public hearing
Concise explanatory statement and final rule docs prepared	After public hearing
Agenda due for Board Meeting	January 19, 2024
Board adopts, amends or rejects proposed rule at Board Meeting	January 25, 2024
Concise explanatory statement provided to public	January 25, 2024
Transmit rule to the State Records Center and Archives	February 1, 2024

Submission due date for publication in NM Register

February 1, 2024

Final regulation published; rule effective date of publication

February 13, 2024

NOTICE OF PERA RULEMAKING

The Public Employees Retirement Association (“PERA”) will consider changes to its rules promulgated under the Public Employees Retirement Act (“PERA Act”). Changes are proposed for the following rule:

1. Rule 2.80.200 - Organization and Operation of the Public Employees Retirement Board;

The proposed amendments provide factors that would disqualify a person from eligibility to be a candidate in an election of the PERA Board (Board), to clarify that appointed Board members meet the same eligibility requirements as elected Board members, and to outline the vacancy procedure if a Board member is removed from the Board. The proposed amendments also codify the existing practice that PERA members can only vote in the Board election for their designated membership group. The proposed amendments clarify that those powers exercised by the election committee may also be exercised by the Board, clarify that a quorum is not required to appoint an individual to fill a vacancy on the Board, and provide the Board with flexibility to fill a Board vacancy at a special board meeting. The rule is reformatted as necessary.

The purpose of the proposed rule changes would be to disqualify candidates for election or appointment to a Board Member position if a candidate has previously served on the Board and has been subject to three or more formal disciplinary actions or has been previously removed from the Board. The purpose of the remaining changes are to update the PERA Board election procedures to align with the new eligibility requirements, to ensure the Board has adequate authority to efficiently fill vacancies and administer elections, and to clarify language that currently exists in rule.

A formal rulemaking hearing will be held on January 9, 2024, at 9:00 a.m. in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico, 87507. The rulemaking hearing will also be accessible through Zoom. The Zoom access link will be published on PERA’s website listed below prior to the hearing. Oral comments will be taken at the public hearing. Final action on the rules will occur at the January 25, 2024 Board meeting of the PERA Board which will be held in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico at a date and time specified in the Board’s Public Meeting Notice. The purpose of the rulemaking hearing is to obtain public input on the proposed amendment to the above-referenced rules. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments on the proposed rule changes.

The authority for the proposed rule changes is NMSA 1978, Section 10-11-130 of the PERA Act and Rule 20.80.200.10 NMAC, which authorizes the adoption and promulgation of rules and regulations necessary to carry out the purposes of the PERA Act and additionally provides that elections shall be conducted according to rules the retirement board adopts from time to time.

Copies of the draft rules are available in PERA’s Office of General Counsel. Written comments, inquiries or requests for copies should be directed to Geraldine Garduno at PERA’s Office of General Counsel, 33 Plaza La Prensa, Santa Fe, N.M., 87507, or geraldine.garduno@pera.nm.gov or 505-476-9351. Written comments should be submitted by the close of business on January 9, 2024. The full text of the proposed rule changes, as well as the Zoom access link for the public hearing, can be found here: <https://www.nmpera.org/about/rule-proposal/>.

Any person with a disability who needs 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 Patricia Winter at 505-795-0712 or patriciab.winter@pera.nm.gov at least one week prior to the public hearing, 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.



PERA

Public Employees
Retirement Association
of New Mexico

INVESTED IN TOMORROW.

PROPOSED AMENDMENT TO THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION OF NEW MEXICO BOARD POLICIES AND PROCEDURES

Section 7.71 of the Board Policies and Procedures is amended to read:

“7.70 Authorization of Board Travel Outside New Mexico:

7.71 When a Board Member requests approval for Board-sponsored travel, the Board Chair or Vice Chair shall inform the requesting Member of travel approval or denial in a timely manner. If there are budget limitations, priority shall be given to new Board Members.

A. If a Board Member is formally sanctioned by the Board, his or her out-of-state travel shall be suspended for the sanction period.

B. Board Members shall be ineligible for out-of-state travel for educational purposes during the last [~~ninety (90) days~~] thirty (30) days of their term of office, unless re-elected to a new term.

7.72 No prepayment or reimbursement of Board Members for travel expenses will be made for travel that is not approved in advance as provided for in this section.”

The amendment shall be effective on the date it is approved and adopted by the Retirement Board of the Public Employees Retirement Association of New Mexico.

