New Mexico Legislature

INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

2018 INTERIM FINAL REPORT

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INTERIM SUMMARY

Investments and Pensions Oversight Committee
2018 Interim Summary

The Investments and Pensions Oversight Committee met five times during the 2018 interim. In that time, the committee focused primarily on concerns related to the fiscal sustainability of the state's two public employee pension programs, the Public Employees Retirement Association (PERA) and the Educational Retirement Board (ERB), and to that of the Retiree Health Care Authority (RHCA). The agencies had recently begun considering options to improve their respective funded ratios and unfunded accrued actuarial liabilities. At the end of the interim, the committee considered a proposal brought forth by the ERB and one by the RHCA to make progress toward that effort. The PERA, meanwhile, had not yet formally endorsed measures of its own to improve its program's sustainability.

As it does every year, the committee also heard updates from those agencies, the State Investment Council (SIC) and the Education Trust Board on program operations and on investments.

Having completed its charge to explore options for instituting a program to encourage retirement savings by private-sector employees, the Retirement Income Security Task Force reported to the committee on its findings: namely, that the future financial health of a large segment of the state's population is in peril. Representatives of the task force outlined recommendations for legislative action to redress the situation.

At its final meeting of the interim, the committee endorsed bills to improve the ERB's sustainability; to improve the RHCA's sustainability; and, brought forward by the SIC, to transfer responsibility for investing the Tax Stabilization Reserve of the General Fund to the state investment officer.

WORK PLAN AND MEETING SCHEDULE

2018 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

The Investments and Pensions Oversight Committee (IPOC) was created by the New Mexico Legislative Council on April 26, 2018. Committee members are as follows:

Members

Rep. Tomás E. Salazar, Chair
Sen. George K. Munoz, Vice Chair
Sen. Jacob R. Candelaria
Rep. Miguel P. Garcia
Sen. Gay G. Kernan
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Sen. Steven P. Neville
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. Patricia Roybal Caballero
Sen. John M. Sapien
Rep. Larry R. Scott
Sen. Elizabeth "Liz" Stefanics
Rep. Jim R. Trujillo

Advisory Members

Sen. William F. Burt
Sen. Carlos R. Cisneros
Rep. Roberto "Bobby" J. Gonzales
Sen. Stuart Ingle
Rep. Bill McCamley
Sen. Mary Kay Papen
Sen. William H. Payne
Rep. Sheryl Williams Stapleton
Sen. James P. White

Work Plan

During the 2018 interim, the IPOC will:

(1) receive reports from the Public Employees Retirement Association (PERA), the Educational Retirement Board (ERB) and the Retiree Health Care Authority (RHCA) on each agency's sustainability and solvency — as measured by actuarial valuation reports, unfunded liabilities, other actuarial metrics and experience studies and as influenced by funding policies — and on its plans for improving sustainability and solvency;

(2) receive reports from the State Investment Council (SIC), the PERA, the ERB, the RHCA and the Education Trust Board (ETB) on each agency's transparency, as demonstrated by the publications of its:

- asset allocation policies;
- investment committee policies;
- financial reports, investment performance reports and, if applicable, actuarial reports;
- investment manager and consultant selection processes and required disclosures;
- investment management and consulting expenses, including base performance and incentive fees and costs, and whether they are expensed or capitalized and

on-budget or off-budget; custodial fees; investment transaction fees; commissions; and other investment-related expenses, if any; and

- audited financial statements and board and committee meeting minutes;

(3) receive reports from the SIC, the PERA, the ERB, the RHCA and the ETB on each agency's value, as demonstrated by its economic impact and as compared to its peers;

(4) receive reports from the SIC, the PERA, the ERB, the RHCA and the ETB on each agency's strategic goals, including its plans and actions to reach those goals;

(5) receive reports from the PERA, the ERB, the RHCA and the state auditor on the effects on governmental entities of recent Governmental Accounting Standards Board statements;

(6) receive a report from the SIC on economically targeted investments of the Severance Tax Permanent Fund;

(7) receive a report from the PERA about public employee participation in its 457b plan;

(8) receive a report on the options and process for implementing a retirement savings vehicle for private-sector employees having limited or no access to a retirement savings arrangement at work and a report from the state treasurer on the findings of the Retirement Income Security Task Force;

(9) receive reports on the disposition or progress of legal claims filed by, on behalf of or against state investing agencies;

(10) receive a report from the State Land Office on revenue generated from state lands and on distributions from the Land Grant Permanent Fund;

(11) consider legislation relevant to these topics; and

(12) as necessary, examine other issues relevant to the investment of public funds and the administration of pension programs.

Investments and Pensions Oversight Committee
2018 Approved Meeting Schedule

Date	Location
June 7	Santa Fe
July 11	Santa Fe
August 10	Santa Fe
October 16	Santa Fe
November 26-27	Santa Fe

AGENDAS AND MINUTES

TENTATIVE AGENDA
for the
FIRST MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

June 7, 2018
State Capitol, Room 307
Santa Fe

Thursday, June 7

10:00 a.m.		**Call to Order and Welcome** —Representative Tomás E. Salazar, Chair —Senator George K. Munoz, Vice Chair
10:10 a.m.	(1)	**Update from the State Investment Council (SIC)** —Steven K. Moise, State Investment Officer, SIC —Vince Smith, Deputy State Investment Officer, SIC
10:40 a.m.	(2)	**Update from the Public Employees Retirement Association (PERA)** —Wayne Propst, Executive Director, PERA —Dominic Garcia, Chief Investment Officer, PERA
11:10 a.m.	(3)	**Update from the Educational Retirement Board (ERB)** —Jan Goodwin, Executive Director, ERB —Bob Jacksha, Chief Investment Officer, ERB
11:40 a.m.	(4)	**Update from the Retiree Health Care Authority (RHCA)** —David Archuleta, Executive Director, RHCA
12:10 p.m.		**Proposed Work Plan and Meeting Schedule** —Tessa Ryan, Staff Attorney, Legislative Council Service
12:30 p.m.		**Adjourn**

MINUTES
of the
FIRST MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

June 7, 2018
State Capitol, Room 307
Santa Fe

The first meeting of the Investments and Pensions Oversight Committee was called to order by Representative Tomás E. Salazar, chair, on June 7, 2018 at 10:00 a.m. in Room 307 of the State Capitol.

Present
Rep. Tomás E. Salazar, Chair
Sen. Jacob R. Candelaria
Rep. Larry A. Larrañaga
Sen. Steven P. Neville
Rep. Jane E. Powdrell-Culbert
Sen. John M. Sapien
Rep. Larry R. Scott
Sen. Elizabeth "Liz" Stefanics
Rep. Jim R. Trujillo

Absent
Sen. George K. Munoz, Vice Chair
Rep. Miguel P. Garcia
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. William "Bill" R. Rehm
Rep. Patricia Roybal Caballero

Advisory Members
Sen. Carlos R. Cisneros
Rep. Roberto "Bobby" J. Gonzales
Sen. Stuart Ingle
Rep. Bill McCamley
Sen. Mary Kay Papen
Rep. Sheryl Williams Stapleton
Sen. James P. White

Sen. William F. Burt
Sen. William H. Payne

Guest Legislators
Rep. Tim D. Lewis
Sen. Nancy Rodriguez
Rep. Linda M. Trujillo

Staff
Tessa Ryan, Staff Attorney, Legislative Council Service (LCS)
Nancy Martinez, Staff, LCS

Guests
The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and posted on the legislature's website.

Thursday, June 7

Update from the State Investment Council (SIC)

Steven K. Moise, state investment officer, SIC, and Vince Smith, deputy state investment officer, SIC, gave an update on the public funds under SIC management.

The SIC currently manages $23.85 billion in assets held in the Land Grant Permanent Fund, Severance Tax Permanent Fund, Tobacco Settlement Permanent Fund and Water Trust Fund, as well as in funds of state agencies, local governments and higher education institutions. Of these, only the Water Trust Fund decreased in value over the past year. Fund growth is attributed to a combination of inflows, which include both money deposited to a fund and investment earnings. One significant driver of inflows to the permanent funds has been oil production in the Permian Basin and the dramatic rise in production over the last decade from hydraulic fracturing. Mr. Moise presented a growth comparison of the Land Grant Permanent Fund and the Severance Tax Permanent Fund and noted that the latter has grown at a much slower rate due to its low level of annual inflows.

Combined distributions from the permanent funds in fiscal year (FY) 2019 are projected to be more than $968 million and account for approximately 15 percent of the state's annual budget. The largest share — $637 million — is allocated to public schools, with the balance allocated to special schools, public buildings, correctional facilities, hospitals, reservoirs and higher education institutions.

Investment returns in the past year for the Land Grant Permanent Fund and the Severance Tax Permanent Fund have been 11 percent and 10 percent, respectively, exceeding the long-term return targets for those funds. Investments are split among public equity (46.4 percent), private market (28.3 percent) and fixed income (24.3 percent) investments. The SIC is shifting the portfolio toward private market investments to offset current slow growth in corporate stocks and bonds, a condition that is projected to continue over the next several years. The portfolio shift is also geared toward weathering the next recession; Mr. Smith noted that the economy and the market seem to be entering a "late cycle" phase, which suggests a recession may soon follow.

The presenters suggested that the committee consider the following in its interim work: 1) New Mexico investments and whether they are prudent; 2) the structure of the investment portfolio; 3) the SIC's oversight of the work done by SIC staff; 4) management fees; and 5) possible legislation.

In response to a question, Charles Wollmann, director of communications and legislative affairs, SIC, who spoke from the audience, explained that a 2003 constitutional amendment increased the distributions from the Land Grant Permanent Fund and that, had it been invested rather than spent, the $750 million in additional distributions made over 12 years might be worth $1.5 billion today.

The chair requested that, in the interest of time, in lieu of questions, members make information requests of the presenters for them to respond to at future meetings. Members requested information on the following from the SIC presenters:

- a breakdown of returns on economic-based investments, i.e., investments in New Mexico;
- dollar-cost averaging for the Severance Tax Permanent Fund if it had better inflows;
- the effect of inflation and possible federal interest rate changes on the funds managed by the SIC;
- legislation necessary to use the income generated by the strong oil production in southeast New Mexico to create jobs in other industries; and
- restoring funds taken from the Tobacco Settlement Permanent Fund for solvency.

Mr. Moise noted in closing that approximately $20 million will be deposited into the state's "rainy day" fund.

Update from the Public Employees Retirement Association (PERA)

Wayne Propst, executive director, PERA, and Dominic Garcia, chief investment officer, PERA, gave an update on the PERA pension system and funds.

The PERA serves nearly 49,000 active and 38,000 retired public employee members, with pension benefits payments paid from the PERA fund exceeding $1.1 billion in FY 2017. The fund currently totals approximately $15.5 billion, and its performance measured at the one-year, five-year, 10-year and 20-year marks ranges from 4.98 percent (10-year return) to 8.34 percent (one-year return). The PERA also administers a 457(b) deferred compensation plan, which includes more than 21,000 participants and has a fund balance of more than $600 million.

The PERA pension system is 75 percent funded. Mr. Garcia noted that in order to reach 100 percent fundedness by the year 2043, the PERA's investment portfolio would need a 10.9 percent return rate over the next 10 years; by his calculation, the probability of that happening is very low. Three main factors have contributed to the system's underfundedness: 1) increases in member benefits that were enacted in the mid-1990s, when investment returns were high; 2) a market downturn in the early 2000s due to the "dot.com bust"; and 3) the Great Recession.

Wisconsin has the only fully funded pension system in the country. Mr. Garcia cited it and similar systems in Canada as examples of defined benefits plans that thrive, as plans can if they are managed with a long-term vision of sustainability and incorporate best practices at all levels. The PERA is in the process of adopting such strategies. For instance, the PERA board elected in December 2017 to end its involvement in selecting money managers and delegated that authority to Mr. Garcia, his staff and PERA consultants. The PERA is also completing an economic and demographic study that shows a need to adjust mortality rate assumptions and investment return projections, the latter currently set at 7.25 percent, with a reset to 7.75 percent after eight years. Actuaries recommend that the projection remain at 7.25 percent.

Members requested information on the following from the PERA presenters:

- the possibility of changing the deferred compensation program to a mutual fund arrangement handled by the SIC;
- the effect of inflation and possible federal interest rate changes on the funds managed by the PERA;
- an analysis of the effect of a one percent vacancy rate in state government on PERA fundedness;
- shifting away from a defined benefit plan to a defined contribution plan for new employees; and
- the percentage of income a retiree would get under a defined benefit plan versus under a 401(k) defined contribution plan.

Update from the Educational Retirement Board (ERB)

Jan Goodwin, executive director, ERB, and Bob Jacksha, chief investment officer, ERB, reported on the ERB pension system, its assets and possible changes to improve its sustainability.

The ERB serves nearly 60,000 active members, down from more than 63,000 in 2009. Retired members total more than 47,000, a number that is increasing. The ERB paid more than $1 billion in pension benefits to its retired members in FY 2017, 80 percent of which went to residents of New Mexico, with an average annual benefit of just over $22,000.

ERB assets totaled nearly $13 billion as of March 31, 2018. Approximately one-half of the investment portfolio is in "unconventional" investments, which yield better returns than are found in public securities and will provide some protection against inflation. Except for the 10-year investment return rate, which was affected by the global market downturn in 2008, returns over the last decade have essentially met or exceeded the ERB's target return rate of 7.25 percent.

Current estimates show that the ERB needs 61 years to become 100 percent funded. To determine what changes can be made to the retirement system to improve its fundedness, ERB staff conducted member interviews statewide and distributed a member survey to gauge member support, held a board meeting in April specifically to address sustainability and met with legislators to assess their support.

At a July meeting with stakeholders, the ERB will develop a legislative proposal to improve the retirement system's sustainability and, later in the interim, present the proposal to the committee for possible endorsement. A bill that was presented by the ERB in 2017 and received the committee's endorsement would have allowed state agencies to discuss certain cybersecurity matters in executive sessions rather than in open meetings and would have exempted certain cybersecurity-related documents from the Inspection of Public Records Act. The bill was not successful in the 2018 legislative session, and Ms. Goodwin reported that the ERB will push the measure again in the 2019 session.

In response to a question, Ms. Goodwin explained "reciprocity retirement", which covers members who have service credit under both the ERB and the PERA.

Members requested information on the following from the ERB presenters:

- the effect of inflation and possible federal interest rate changes on the funds managed by the ERB;
- an analysis of the effect of a one percent vacancy rate in state government on ERB fundedness;
- the percentage of public education employees who are near retirement age; and
- vacancies in the public education and higher education systems that account for the drop in active membership since 2009.

Update from the Retiree Health Care Authority (RHCA)

David Archuleta, executive director, RHCA, gave an update on the RHCA and the health care coverage it provides to the state's retired public employees.

The RHCA operating budget for FY 2019 is $338.5 million, one percent of which is used for program overhead costs. Active membership at the end of FY 2017 was more than 97,000, with one-half of the members coming from public education, one-fourth from state agencies and one-fourth from local governments and certain higher education institutions. Retired members and eligible family members at that same time totaled more than 62,000.

Premiums for plans offered through the RHCA increased in 2018, with increases ranging from six percent to 27 percent.

The RHCA's 2017 solvency study projected that the authority will begin deficit spending in 2020, when expenditures are projected to exceed revenues by more than $9 million. The study also projected the RHCA solvency period at 18 years, though possible changes in the federal Medicare program would affect that projection. The RHCA currently has a net unfunded liability of more than $4.5 billion, with a plan fiduciary net position of 11.26 percent.

The RHCA is on track to submit required employer allocation reports to the state auditor by mid-June. The authority will hold its annual board meeting in Taos in July, at which the board will elect new officers, review plan data and review plan changes for 2019. Also in the next several months, the RHCA will announce its selection of a pharmacy benefits manager and host open enrollment and switch enrollment periods.

In response to questions, Mr. Archuleta:

- clarified the RHCA policy of enrolling Medicare-eligible members by default in the Medicare Advantage plan if they do not state an enrollment preference; and
- explained that because Medicare Advantage plans are heavily subsidized by the federal government, they cost less for members and the RHCA and added that the subsidies for this plan may change.

A member requested information on the following from Mr. Archuleta:

- the effect of inflation and possible federal interest rate changes on the funds managed by the RHCA.

Proposed Work Plan and Meeting Schedule

Ms. Ryan presented a proposed work plan and meeting schedule for the committee's work during the 2018 interim. In discussion, members requested that the committee also address the following:

- possible amendments to statute to direct a certain portion of rent and royalty payments to the state's rainy day fund; and
- a review of other states' experiences moving from defined benefit pension plans to defined contribution plans.

The committee adopted the proposed work plan and meeting schedule without objection.

Adjournment

There being no further business before the committee, the committee adjourned at 12:30 p.m.

Revised: June 26, 2018

TENTATIVE AGENDA
for the
SECOND MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

July 11, 2018
State Capitol, Room 307
Santa Fe

Wednesday, July 11

9:00 a.m.		**Call to Order and Welcome** —Representative Tomás E. Salazar, Chair —Senator George K. Munoz, Vice Chair
9:05 a.m.	(1)	**Retiree Health Care Authority (RHCA): Sustainability and Solvency** —David Archuleta, Executive Director, RHCA
10:35 a.m.	(2)	**Educational Retirement Board (ERB): Sustainability and Solvency** —Jan Goodwin, Executive Director, ERB
12:05 p.m.		**Approval of Minutes**
12:10 p.m.		**Lunch**
1:15 p.m.	(3)	**Public Employees Retirement Association (PERA): Sustainability and Solvency** —Wayne Propst, Executive Director, PERA
2:45 p.m.	(4)	**Land Grant Permanent Fund and Severance Tax Permanent Fund Distributions and the State's Fiscal Stability** —Steven K. Moise, State Investment Officer, State Investment Council (SIC) —Vince Smith, Deputy State Investment Officer, SIC
3:30 p.m.	(5)	**SIC Liquidity Plans for a Market Downturn** —Steven K. Moise, State Investment Officer, SIC —Vince Smith, Deputy State Investment Officer, SIC
4:15 p.m.		**Adjourn**

MINUTES
of the
SECOND MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

July 11, 2018
State Capitol, Room 307
Santa Fe

The second meeting of the Investments and Pensions Oversight Committee was called to order by Representative Tomás E. Salazar, chair, on July 11, 2018 at 9:07 a.m. in Room 307 of the State Capitol.

Present
Rep. Tomás E. Salazar, Chair
Rep. Miguel P. Garcia
Rep. Jane E. Powdrell-Culbert
Rep. Patricia Roybal Caballero
Rep. Larry R. Scott
Sen. Elizabeth "Liz" Stefanics
Rep. Jim R. Trujillo

Absent
Sen. George K. Munoz, Vice Chair
Sen. Jacob R. Candelaria
Sen. Gay G. Kernan
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Sen. Steven P. Neville
Rep. William "Bill" R. Rehm
Sen. John M. Sapien

Advisory Members
Sen. Carlos R. Cisneros
Rep. Roberto "Bobby" J. Gonzales
Rep. Bill McCamley
Sen. James P. White

Sen. William F. Burt
Sen. Stuart Ingle
Sen. Mary Kay Papen
Sen. William H. Payne
Rep. Sheryl Williams Stapleton

Staff
Tessa Ryan, Staff Attorney, Legislative Council Service (LCS)
Kathleen Dexter, Researcher, LCS
Nancy Martinez, Staff, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file and posted on the legislature's website.

Wednesday, July 11

Retiree Health Care Authority (RHCA) Update

David Archuleta, executive director, RHCA, gave an overview of the RHCA's plan benefits, as well as solvency and sustainability challenges.

The RHCA provides health, dental and vision plans for both pre-Medicare and Medicare-eligible retirees, paid for through public employee and employer contributions to the Retiree Health Care Fund. Premium costs charged to retirees are offset by subsidies based on the number of years a retiree served as an active public employee. In contrast to plans available through the New Mexico Health Insurance Exchange, RHCA plans are not age-banded, have lower annual out-of-pocket maximums and include prescription drug coverage.

In its most recent Governmental Accounting Standards Board filing, the RHCA showed plan fundedness at 11.26 percent. The RHCA's most current solvency analysis projects that without increases to contribution rates and premiums or changes to the benefits package, the RHCA will begin deficit spending in 2020 and will become insolvent in 2035. Premiums and benefits can be adjusted by the RHCA board; contribution rates, however, are set in statute and can be adjusted only by legislative action. Rising medical care costs are a major issue for the RHCA; Mr. Archuleta cited studies by the U.S. Bureau of Labor Statistics and the Centers for Medicare and Medicaid Services that show these costs rising at an "unsustainable level". This trend, coupled with the recent elimination of the individual mandate in the federal Patient Protection and Affordable Care Act, aggravates the RHCA's solvency issue.

On the recommendation of a work group formed in 2007, the RHCA board has taken actions over the past several years to improve solvency. These include reducing or phasing out certain subsidies; increasing cost-sharing; establishing age and service requirements for receiving maximum plan subsidies; and establishing an open enrollment period. Actions the board plans to take in the next five years include adjusting plans to reduce costs; further reducing certain subsidies; increasing premiums; evaluating new programs and adjusting existing programs; developing value-based purchasing initiatives; and providing information to retirees on managing their health. The board will also advocate for legislation in the 2019 legislative session to increase employee and employer contribution rates.

On questioning, Mr. Archuleta and committee members addressed the following topics.

Status. The statute that created the RHCA states that the legislature did not intend to create "trust relationships", and there has been no action to change the plan to an irrevocable trust, as recommended by the 2007 work group. The statute allows for changes to the program as well as its termination. If it were terminated, the RHCA trust fund currently does not have the balance to return all of the contributions made to date.

Liabilities. Under new federal requirements, RHCA liabilities must be allocated to and reported by its participating political subdivisions. If these allocations were considered on a par with liabilities from an irrevocable trust, which the RHCA is not, they might affect the political subdivisions' credit ratings.

Solvency. Each one percent increase in RHCA contribution rates is projected to generate $40 million in revenue, approximately one-third of which would come from the General Fund as employer contributions for state employees. The RHCA has modeled out revenue impacts from increases of one percent and 1.5 percent in combination with reductions in pre-Medicare retiree subsidies; the board will consider these at its next meeting and will hold meetings with stakeholders in the next month. The cost of the increase for an individual who earns $40,000 per year would come to approximately $6.00 per paycheck.

Benefits are currently paid for by employee and employer contributions and retiree premiums. A certain portion of those contributions is also put into the RHCA trust fund. Without changes to contribution rates, the RHCA will have to start drawing on the trust fund to pay its benefits obligations in 2020.

Increasing costs for specialty prescription drugs are a major contributor to the RHCA's solvency issues. The RHCA is limited in how much it can negotiate to reduce drug prices.

Members. The RHCA's Medicare-eligible membership is increasing, and its pre-Medicare membership is decreasing. These trends have a positive fiscal effect on the RHCA.

Members can take their concerns to the RHCA board, which is a representative body with members from an array of groups covered by the RHCA.

Plans. The RHCA's pre-Medicare premier plan equates to a silver-level plan on the open market, and the value plan equates to an open-market bronze-level plan. A retiree's cost for these plans is approximately 34 percent of an open-market cost because the retiree has pre-paid for the plan with payroll contributions over the course of his or her career.

Medicare plans are less costly for the RHCA than pre-Medicare plans because the federal government covers 80 percent of the cost of Medicare plans. The RHCA's expense for Medicare plans is entirely for prescription drug coverage.

Wellness programs. The RHCA offers gym memberships, online cooking classes and online health and disease management classes and conducts outreach to increase participation.

Tax Administration Suspense Fund. In the 2016 special session, the legislature reduced the RHCA's distribution from the Tax Administration Suspense Fund by approximately $350 million over the life of the fund. Increased investment earnings in 2017 made up for some of the lost revenue.

Mr. Archuleta agreed to provide:

(1) information on and a table of RHCA contribution increases to date;
(2) a booklet outlining RHCA benefits; and
(3) information on the portion of the RHCA's total liabilities that are attributable to pre-Medicare retirees.

Educational Retirement Board (ERB) Update

Jan Goodwin, executive director, ERB, reported on the ERB pension system and its assets, solvency and sustainability.

In response to questions posed by committee members at the previous meeting, Ms. Goodwin noted that:

- though higher inflation can yield higher investment returns, overall it has a slight negative effect on the ERB plan;
- a one percent vacancy rate in state employment results in a decrease in contributions and would delay full ERB fundedness for two years; and
- approximately 14 percent of ERB members became eligible to retire a year ago, 17 percent became eligible last month and 25 percent will become eligible three years from now.

Ms. Goodwin noted that the ERB plan is solvent, with a funded ratio just shy of 63 percent, and is on the path to full fundedness. In 2014, the projected date for full fundedness was 26 years out; however, when the board later adjusted mortality projections, inflation projections and earning assumptions, full fundedness moved to 61 years out. The ERB is developing proposals for reaching full fundedness more quickly — "within a reasonable amount of time", as stated in Ms. Goodwin's proposed definition of "sustainability". Once the plan is fully funded, it will be better able to withstand market downturns, contributions can be reduced, cost-of-living adjustment (COLA) reductions can end and credit ratings for the state and the ERB's participating employers will improve.

Contribution levels, eligibility requirements and COLAs are fixed in statute and can only be changed by the legislature. Each has been adjusted at least once since 2005; the ERB will present proposals for further statutory adjustments to improve the plan's sustainability at the committee's November meeting.

Ms. Goodwin closed with an overview of the ERB's strategic goals, which center on keeping the fund financially sound; improving services; identifying and managing risk; and building effective, collaborative relationships with stakeholders.

On questioning, Ms. Goodwin and committee members addressed the following topics.

Retirement patterns. The average retirement age for ERB members is increasing. Sixty-five percent of retirees are short-term employees — those who begin their careers at a later age and retire with fewer than 25 years of service. One consideration to help with the ERB's fundedness is to enact tiered multipliers, under which a retiree's pension multiplier is tied to the number of years that the retiree serves.

Contributions and benefits. Contribution levels as set in statute fall short of the actuarially required contribution level that would more quickly lead to 100 percent fundedness. An actuarially determined employer contribution rate is considered best practice. Some states allow for fluctuations in both contributions and benefits based on investment performance.

Portfolio. The portfolio's asset allocation has been adjusted and diversified to better weather a potential market downturn.

Fundedness and liabilities. Differences in ERB fundedness ratios as reported by other sources are a result of using different earnings assumptions. The ERB has run a sensitivity analysis on its earnings assumptions.

As of June 30, 2017, the ERB's unfunded liability was approximately $7.4 billion. Some other states with significantly higher unfunded liabilities, such as Illinois, exacerbated their fundedness problems by providing "pension contribution holidays", during which employees earned service credit but were not required to make contributions. The ERB has never done this.

Spiking. The ERB proposed legislation a few years ago, and will again in 2019, to enact "anti-spiking" measures that prevent manipulation of an employee's salary to yield a higher pension calculation.

Vacancies. The current vacancy rate in public and higher education has negatively affected the ERB through decreased contributions. A member stated concerns about school districts that hire long-term substitutes rather than permanent teachers, noting that this affects not only the ERB but also the quality of teaching.

Defined contribution and hybrid plans. The ERB investigated defined contribution and hybrid plans a decade ago and found that defined benefit plans are less expensive because they allow for pooling of risk, cost less for investment management and yield higher investment performance. Defined contribution plans were originally designed as a supplement to defined benefit plans and require double the amount of contributions to yield the same benefits as a defined benefit plan.

Salary increases. The Department of Finance and Administration denied all recently proposed salary increases for ERB staff, and the ERB has accepted its denial.

Ms. Goodwin agreed to provide:

(1) on request, information on defined benefit plans and defined contribution plans; and

(2) information on the probability rating of the ERB's 61-year projection for full fundedness.

Public Employees Retirement Association (PERA) Update

Wayne Propst, executive director, PERA, and Dominic Garcia, chief investment officer, PERA, gave an update on the PERA pension system's solvency and sustainability outlook.

The PERA's defined benefit pension system was designed to work together with social security and other plans, such as defined contribution plans, to provide a secure retirement income for public employees. In a comparison of defined benefit plans and defined contribution plans, Mr. Garcia showed that defined contribution plans require significantly higher contribution rates because they cannot take advantage of pooled risk or investment economies of scale and tend to yield lower returns as retirees "de-risk" their portfolios with age.

In response to questions from the committee's previous meeting, Mr. Garcia showed that the impacts of inflation and economic growth on the PERA have been roughly equal since 1970, with periods of rising rates offsetting falling rates in nearly equal measure. He also showed how the assets in the PERA's diversified portfolio perform in these fluctuations and balance one another.

The PERA's unfunded actuarial accrued liability as of June 30, 2017 was $5.07 billion, with a plan funded ratio of nearly 75 percent and full fundedness projected in 55 years. In its recent report and downgrade of the state's bond rating, Moody's Investors Service (Moody's) labeled the state's direct pension liabilities for the PERA as "moderate" and calculated the unfunded liability at $6.6 billion, a number that PERA staff are not able to duplicate. Mr. Propst said he believes that Moody's used a significantly lower discount rate in its investment return projections than the PERA uses. The PERA board is reviewing an experience study of the mortality, investment, retirement rate, salary and payroll growth assumptions and will adjust its projections downward based on the study's findings.

The PERA system includes five plans, each with its own funded ratio and projection path. Of the plans, only the state police plan is fully funded; the others range from approximately 80 percent funded to 60 percent funded, with two of those plans — the state general plan and the municipal fire plan — on a downward projection path.

Mr. Propst noted that changes made in Senate Bill 27 (2013) have had a positive effect on the state's pension systems; however, that effect has been muted by factors both within and beyond the PERA's control. The PERA board will develop legislative proposals to make additional adjustments in statute to strengthen the pension system and will present those proposals to the committee later in the interim.

On questioning, the presenters further explained the differences in cost and returns between defined benefit plans and defined contribution plans — pooled risk, economies of scale and investment returns — and noted that a large portion of the PERA's unfunded liability was generated 20 years ago when benefits were increased.

State Investment Council (SIC) Update

Steven K. Moise, state investment officer, SIC, and Vince Smith, deputy state investment officer, SIC, reported on the state's permanent funds, which are managed by the SIC.

The Land Grant Permanent Fund, Severance Tax Permanent Fund and Tobacco Settlement Permanent Fund all increased in value in the year ending May 31, 2018, with increases ranging from $11 million (Tobacco Settlement Permanent Fund) to $1.4 billion (Land Grant Permanent Fund). The Water Trust Fund lost value during that period because statute requires an annual distribution of $4 million regardless of the fund's balance or investment performance. In contrast, distributions from the Land Grant Permanent Fund and Severance Tax Permanent Fund are based on a percentage of the five-year rolling average of the funds' balances. Mr. Moise noted that because statute requires a specific dollar-amount distribution from the Water Trust Fund, there is a "better than 50 percent chance" that the fund will be depleted within 20 years.

Mr. Moise presented a chart of distributions from the Land Grant Permanent Fund and Severance Tax Permanent Fund since 2000. Distributions from the Land Grant Permanent Fund grew in all but two years during that period; the Severance Tax Permanent Fund has been less stable, with decreased distributions in seven of those years. The funds have benefited from increased oil and gas production in the past several years, due primarily to hydraulic fracturing, or "fracking", in the Permian Basin. Mr. Moise cited experts who project a potential production capacity of 30 years in that basin; however, he added that the state must keep its permanent funds strong enough to weather production downturns that still might occur, as well as the eventual end of oil production in that area.

The Tobacco Settlement Permanent Fund, which receives annual distributions from tobacco manufacturers under the Master Settlement Agreement, also saw an increase in distributions in the past year. Its balance, however, dropped sharply in the past few years as the fund, which is designated in statute as a reserve fund, was tapped to balance the state budget.

Mr. Smith gave a history of inflation since 1930, noting that rates have remained relatively low and stable since the early 1980s, averaging approximately 2.25 percent in the past 25 years. The SIC expects this average to continue in the next decade and has adjusted the investment portfolio accordingly. The national economy, as of late 2017, began moving into "late cycle", a phase that has historically been followed by a market downturn. With this possibility on the horizon, the SIC conducted a liquidity study on the portfolio, which shows that the Land Grant Permanent Fund is in a better position to handle a downturn than the Severance Tax Permanent Fund. The SIC has since adjusted portfolio investments for "targeted liquidity".

Mr. Moise noted that he and Mr. Smith will respond at the committee's August meeting to questions posed by committee members at the June meeting. Those questions concerned economically targeted investments and legislation for job creation efforts using the "windfall" oil and gas revenue the state is currently receiving.

On questioning, the presenters, committee members and Charles Wollmann, director of communications and legislative affairs, SIC, addressed the following topics.

Tobacco Settlement Permanent Fund. A member proposed that some of the state's windfall oil and gas revenue be used to restore to the Tobacco Settlement Permanent Fund money that was used to balance the budget.

J.P. Morgan. J.P. Morgan serves as the SIC custody bank and has provided, at no cost, a risk management tool with which the SIC can assess risk in its portfolio.

Tribal and colonias infrastructure earmarks. Earmarks for funding tribal and colonias infrastructure projects do not affect the Severance Tax Permanent Fund but, rather, come from the Severance Tax Bonding Fund.

New money. The permanent funds generated $70 million in "new money" that can be used in the next year.

SIC local government clients. The SIC handles investments for 21 local government entities, including counties, cities and school districts.

Adjournment

There being no further business, the committee adjourned at 3:15 p.m.

Revised: August 9, 2018

TENTATIVE AGENDA
for the
THIRD MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

August 10, 2018
State Capitol, Room 307
Santa Fe

<u>Friday, August 10</u>

10:00 a.m.		**Call to Order and Welcome** —Representative Tomás E. Salazar, Chair —Senator George K. Munoz, Vice Chair
10:05 a.m.	(1)	**Retirement Income Security Task Force (RISTF): Purpose, Composition and Guiding Principles** —Tim Eichenberg, State Treasurer and Chair, RISTF
10:35 a.m.	(2)	**Public Employees Retirement Association (PERA) SmartSave Deferred Compensation Plan** —Karyn Lujan, Deferred Compensation Plan Manager, PERA —Dominic Garcia, Chief Investment Officer, PERA
11:20 a.m.	(3)	**PERA: Transparency** —Wayne Propst, Executive Director, PERA
12:05 p.m.		**Approval of Minutes — June and July Meetings**
12:10 p.m.		**Lunch**
1:15 p.m.	(4)	**Overview and History of Economically Targeted Investments of the Severance Tax Permanent Fund (STPF)** —Steven K. Moise, State Investment Officer, State Investment Council (SIC) —Charles Wollmann, Director of Communications and Legislative Affairs, SIC
2:00 p.m.	(5)	**New Mexico Private Equity Investments of the STPF** —Brian Birk, Sun Mountain Capital —Lee Rand, Sun Mountain Capital

2:45 p.m.	(6)	**SIC: Transparency and Outreach** —Steven K. Moise, State Investment Officer, SIC —Charles Wollmann, Director of Communications and Legislative Affairs, SIC
3:30 p.m.	(7)	**Educational Retirement Board (ERB): Transparency** —Jan Goodwin, Executive Director, ERB
4:15 p.m.	(8)	**Retiree Health Care Authority (RHCA): Transparency** —David Archuleta, Executive Director, RHCA
5:00 p.m.		**Adjourn**

MINUTES
of the
THIRD MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

August 10, 2018
State Capitol, Room 307
Santa Fe

The third meeting of the Investments and Pensions Oversight Committee was called to order by Representative Tomás E. Salazar, chair, on August 10, 2018 at 10:05 a.m. in Room 307 of the State Capitol.

Present
Rep. Tomás E. Salazar, Chair
Sen. George K. Munoz, Vice Chair
Sen. Jacob R. Candelaria
Rep. Miguel P. Garcia
Rep. Larry A. Larrañaga
Rep. Jane E. Powdrell-Culbert
Rep. Patricia Roybal Caballero
Sen. John M. Sapien
Sen. Elizabeth "Liz" Stefanics
Rep. Jim R. Trujillo

Absent
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Sen. Steven P. Neville
Rep. William "Bill" R. Rehm
Rep. Larry R. Scott

Advisory Members
Rep. Roberto "Bobby" J. Gonzales
Rep. Bill McCamley
Sen. James P. White

Sen. William F. Burt
Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Mary Kay Papen
Sen. William H. Payne
Rep. Sheryl Williams Stapleton

Staff
Tessa Ryan, Staff Attorney, Legislative Council Service (LCS)
Kathleen Dexter, Researcher, LCS
Nancy Martinez, Staff, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file and posted on the legislature's website.

<u>Friday, August 10</u>

Retirement Income Security Task Force

Tim Eichenberg, state treasurer and chair of the Retirement Income Security Task Force, and DeAnza Valencia, associate state director for advocacy, AARP New Mexico, reported on the task force's purpose, composition and guiding principles.

The Retirement Income Security Task Force was formed in response to Senate Joint Memorial 12 (2017 regular session). The joint memorial directed the task force to study New Mexicans' ability to retire in a financially secure manner and to evaluate retirement savings options for those who have limited or no access to employment-based retirement savings arrangements. In addition to State Treasurer Eichenberg, task force members include legislators and representatives from state agencies, nonprofit entities, the business community, labor unions, investment companies and AARP New Mexico.

A study by the University of New Mexico's Bureau of Business and Economic Research (BBER) found that only 27 percent of working New Mexicans over 50 years old have at least $10,000 in retirement savings, and 56 percent have no retirement savings at all. The study projects that at the current rate, New Mexicans 60 years or older with less than $10,000 in savings will grow to nearly 500,000 people by 2040. The study also noted that New Mexico has the nation's highest rate of workers without access to a retirement savings plan at work.

The task force developed several guiding principles for its work, including that retirement savings vehicles should be easily accessed by workers, easily implemented by employers, affordable for both employees and employers and portable across jobs. A final report and legislative recommendations will be presented to the committee at its October meeting. Among the recommendations, the presenters noted, will be proposals to create a "hybrid" retirement savings plan for working New Mexicans, improve financial literacy education, create an online marketplace for company savings programs and expand workers' ability to contribute through payroll deductions.

On questioning, the presenters and committee members addressed the following topics.

BBER retirement study. Data produced by the National Institute on Retirement Security is included in the BBER study, which includes both national and New Mexico data.

Retirement insecurity factors. Current factors contributing to retirement insecurity include a shift from defined benefits plans to defined contribution plans, a drop in personal savings and an increase in debt carried by workers as they retire.

Financial literacy. Fidelity Investments, which has a representative on the Retirement Income Security Task Force, has a program to instruct teachers how to teach financial literacy at all grade levels.

Public Employees Retirement Association (PERA) Deferred Compensation Program

Karyn Lujan, deferred compensation plan manager, PERA, and Dominic Garcia, chief investment officer, PERA, gave an update on PERA SmartSave, a deferred compensation program available to PERA members.

PERA SmartSave is a voluntary 457(b) defined contribution retirement plan separate from the PERA defined contribution retirement plan. PERA SmartSave is funded entirely through quarterly fees imposed on participants, and participants have total control over how their savings are invested, with investment options ranging from conservative to aggressive. As of June 30, 2018, the plan had nearly 21,700 participants and assets of nearly $604.8 million. Of the plan's participants, approximately 14,000 are actively making contributions to their accounts.

One current plan initiative concerns the New Mexico Stable Value Fund, which was the default option for participants until late 2015 and currently represents the entire investment portfolio of approximately 3,200 PERA SmartSave participants. Because the fund was designed more to protect against loss than to yield high returns, it is more appropriate for participants who are nearing retirement than for younger participants. PERA SmartSave staff is drafting a letter to educate participants on more effective asset allocation and portfolio diversification.

A pilot project is under way to test a new system for online enrollment and contribution changes. Ms. Lujan noted that feedback from project participants reveals both successes and challenges. Other initiatives include outreach through special events and social media to increase participation, outreach to participants in public retirement plans other than the PERA, research on the feasibility of auto-enrollment or active enrollment at the point of hiring and a request for proposals for a new third-party plan administrator.

On questioning, the presenters and committee members addressed the following topics.

Contribution caps. PERA SmartSave caps are set at the federal level, not at the state level, and range from $18,500 per year to $24,500 per year, depending on the participant's age.

Online functions. Enrollment and contribution management greatly increased when the PERA SmartSave online function was implemented. Participation data, however, is difficult to extract because the plan administrator reports a single total for all transactions.

Employee Retirement Income Security Act of 1974 (ERISA). PERA SmartSave is not subject to ERISA requirements, though the plan does adhere to standards set by that act.

PERA Transparency

Wayne Propst, executive director, PERA, Mr. Garcia and Anna Williams, chief financial officer, PERA, reported on ways the PERA adheres to transparency requirements.

PERA transparency measures include:

- real-time audio and video streams for all board and committee meetings;
- online archives of audio and video streams and minutes;
- independent oversight and review of assets, liabilities and internal controls;
- review of the PERA Comprehensive Annual Financial Report (CAFR) by the Office of the State Auditor;
- online posting of the CAFR, the Popular Annual Financial Report, actuarial valuation reports, General Accounting Standards Board Statement 67 supplemental reports, the manager selection process, investment services procurement policies and periodic performance reviews and summaries;
- net-of-fee reporting and disclosure of expenses online and in legislative committee hearings;
- Sunshine Portal posting of contracts and salaries;
- timely response to Inspection of Public Records Act (IPRA) requests;
- disclosure of investment manager expenses; and
- staff ethics training and code of conduct implementation.

In addition, the PERA board revised its governance policies in 2017 to improve transparency and accountability in its investment process and to delegate investment manager selection authority to PERA staff. Other recent changes adopted by the board include a revised strategic asset allocation and an active risk and return budget.

On questioning, the presenters and committee members addressed the following topics.

PERA board. Members raised concerns over the qualifications of PERA board members and raised the possibility of setting qualifications in statute as has been done for State Investment Council (SIC) and Public Regulation Commission members. Presenters noted that, following the governance changes adopted by the board in December 2017, PERA investment decisions are no longer made by the board but by PERA staff members, who have investment training and experience.

Portfolio management. The PERA portfolio is managed by external investment managers, not by in-house staff. Forty-eight percent of the portfolio is actively managed.

IPRA requests. Most IPRA requests submitted to the PERA concern investment manager selection and come from out of state or from the media.

Legislative Finance Committee (LFC) information. The PERA provides pension and investment information to the LFC for inclusion in the LFC's online dashboards. The PERA also provides the LFC with information on investment fees but does not include this information on its own website due to privacy issues with certain private funds.

Consolidated board. A member raised the possibility of eliminating the separate boards for the PERA, SIC and Educational Retirement Board (ERB) and creating a single consolidated board to oversee investments for all three systems.

Mr. Garcia agreed to provide information on:

(1) the composition of pension boards in other states;
(2) the background requirements for PERA investment committee members; and
(3) the PERA staff's collective experience in public fund investing and free market trading.

Minutes

On a motion duly made, seconded and unanimously adopted, the committee approved the minutes for its June 7, 2018 and July 11, 2018 meetings.

New Mexico-Based Investments of the Severance Tax Permanent Fund

Steven K. Moise, state investment officer, SIC, and Charles Wollmann, director of communications and legislative and client affairs, SIC, reported on investments in the Severance Tax Permanent Fund intended to stimulate the state's economy.

Economically targeted investments (ETIs) are authorized by statute and directed to enterprises based in New Mexico. Increased tax revenue generated through job and business creation is supposed to offset below-market returns that are common with ETIs. Since the program's inception in 1993, the state's primary ETIs have included the New Mexico Private Equity Investment Program, which has been the most effective ETI to date; the Small Business Investment Corporation; and the zero-interest film loan program. Under the film loan program, $243 million in loans was repaid in full, but only $2 million in profits was returned to the state before the program was discontinued in 2008. Other ETIs that yielded either low returns or outright losses include Region III Housing Authority bonds and direct investments in failed companies Eclipse, Earthstone and TCI Medical. The SIC has since fine-tuned the ETI program and has created the New Mexico Catalyst Fund to provide seed and early-stage funding for start-up companies.

Up to nine percent of the Severance Tax Permanent Fund may be invested in ETIs. These investments currently account for 6.7 percent of the fund.

On questioning, the presenters and committee members addressed the following topics.

Film loan program. Though the loans were eventually repaid in full and the money spent in-state, the $243 million invested in films was "parked" for 10 years and unavailable for further investment.

Catalyst Fund. The Catalyst Fund is a "co-investment fund"; an entity that receives money from the fund must also raise investment funds from other sources. The Catalyst Fund includes state, federal and private money.

ETI percentage of Severance Tax Permanent Fund. Members expressed concerns over increasing the amount of the Severance Tax Permanent Fund currently allocated to ETIs. Mr. Moise noted that Sun Mountain Capital conducts a pacing study to gauge investment opportunities and has determined that five percent is a good level for investment in ETIs.

State bank. Members and presenters discussed positive and negative aspects of establishing a state bank for making business investment loans.

Mr. Wollmann agreed to provide information on:

(1) the percent of return for the portion of the Severance Tax Permanent Fund that is dedicated to ETIs since that program was established in 1993; and
(2) gains and losses in the Small Business Investment Corporation program over five and 10 years.

Sun Mountain Capital

Brian Birk, Lee Rand and Dan Brooks — managing partner, partner and senior associate, respectively, of Sun Mountain Capital — gave an update on the state's private equity investment program for which their firm serves as program advisor.

The New Mexico Private Equity Investment Program was established in 1993 with the dual goals of achieving solid financial returns and spurring job creation in the state. While investment returns in the aggregate for the program over the past five years range from 8.6 percent to 12 percent, returns since the program's inception are as low as -10.1 percent as a result of investments made prior to 2007. To date, the program has invested more than $2.5 billion in 38 funds, with 78 New Mexico-based companies funded. Nearly 70 percent of the companies currently in the program are in the health care and technology sectors, with the remainder in aviation, cleantech, energy and other industries.

The presenters used a multiplier factor of 6.1 to gauge the impact of the program on New Mexico: every $1.00 invested by the program attracts $6.10 of outside investment to the state.

On questioning, the presenters and committee members addressed the following topics.

Sun Mountain Capital services and fees. Sun Mountain Capital invests state money in New Mexico-based venture capital funds and advises start-up companies on how to navigate the program, apply for funding and attract other resources. The state pays $195,000 to Sun Mountain Capital in annual investment management fees.

Private equity program adjustments. The presenters noted three possible improvements to the program: 1) expanded investment with new fund managers that invest in New Mexico; 2) additional investment in companies that have already received funds and succeeded; and 3) expansion into investments other than venture capital, such as loans to rural enterprises.

Venture capital. A member expressed concern that the private equity investment program focuses on venture capital when that is not always what a company needs.

Mr. Birk agreed to provide the annual investment plan document for Sun Mountain Capital.

SIC Transparency

Mr. Moise and Mr. Wollmann reported on SIC transparency and outreach initiatives.

The SIC's website, which is updated at least monthly, was recently redesigned to give public access to more information on the SIC's policies, meetings and investments. All policies, including investment policies, are posted on the site, as are financial reports, investment reports, annual investment plans and meeting minutes. SIC meetings comply with Open Meetings Act requirements, and all SIC decisions are made in meetings that are open to the public. The council also welcomes public comment. Archived recordings of SIC meetings are posted on the governor's website. The SIC recently published a 60-year anniversary report that provides historical information on the council and the permanent funds.

On questioning, the presenters noted that the SIC has contracted with Colmore to provide investment fee verification services, with the firm's first report due this month.

ERB Transparency

Jan Goodwin, executive director, ERB, reported on transparency measures incorporated into ERB policies and practices.

The ERB website provides access to actuarial, financial, expense, investment performance and asset allocation reports; policies; the ERB strategic plan; third-party placement agent disclosures; ERB board membership and governance; and meeting schedules and minutes. The website also includes information on the ERB's recent Improving Sustainability State Tour, including a video of the presentation given by ERB staff in 13 communities around the state and results of a recent sustainability survey of ERB members.

On questioning, Ms. Goodwin and committee members addressed the following topics.

Sustainability survey. The survey showed support among ERB members for an increase in the employer contribution rate, a reduction in or suspension of the cost-of-living adjustment and a tiered multiplier for new employees.

Transparency policy. The ERB's transparency policy was initially issued in 2016 and amended in late 2017.

Investments and investment committee. Approximately 30 percent of ERB investments are managed in-house. Returns for fiscal year 2018 were 8.3 percent, which exceeded the overall investment target. Because return targets are not set for all investments, targets are not always reflected in the investment committee's minutes.

All members of the ERB investment committee receive annual investment training, and the committee includes an investment professional. While the committee has authority to make investment decisions, the board retains fiduciary status and responsibility.

Staff salaries. Members discussed the salary increases proposed earlier in the year for ERB staff, how the proposal was portrayed in the media and the public reaction and the need for competitive salaries to retain experienced investment staff.

Ms. Goodwin agreed to:

(1) investigate the possibility of putting additional ERB information on the state's Sunshine Portal beyond the salary and contract information already posted there;
(2) provide results from the ERB's member survey at a future Investments and Pensions Oversight Committee meeting, with copies of those results made available to committee members prior to that meeting; and
(3) meet with Senator Candelaria to review the most recent national public pension fund salary survey.

Retiree Health Care Authority (RHCA) Transparency

David Archuleta, executive director, RHCA, reported on the RHCA's transparency policies and practices, which adhere to provisions in the Open Meetings Act and the IPRA.

The RHCA disseminates information to its members through a newsletter, direct mailings, email, a website and a Facebook page. Board meetings are open to the public, with 10 days' advance notice given for meetings and agendas posted 72 hours prior to each meeting. The board also periodically meets outside of Albuquerque and encourages members to attend. The RHCA website includes information on investments and markets; the plan design; budget, financial and investment reports; annual financial audits; and notices for events, trainings and switch-enrollment meetings. RHCA staff responds to IPRA requests and is trained annually in "sunshine laws". All purchasing complies with the Procurement Code and the Health Care Purchasing Act.

Mr. Archuleta summarized the 2019 plan changes adopted at the most recent RHCA board meeting, notably premium increases for pre-Medicare plans, Medicare supplement plans and dental plans; and a premium decrease for Medicare Advantage plans. Projected deficit spending and the plan solvency period both extend by two years with these changes.

Adjournment

There being no further business, the committee adjourned at 4:07 p.m.

Revised: October 15, 2018

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

October 16, 2018
State Capitol, Room 307
Santa Fe

Tuesday, October 16

10:00 a.m.		**Call to Order and Welcome** —Representative Tomás E. Salazar, Chair —Senator George K. Munoz, Vice Chair
10:05 a.m.	(1)	**Update from the Education Trust Board (ETB)** —Dr. Barbara Damron, Secretary, Higher Education Department; Chair, ETB —Theodore Miller, Executive Director, ETB
11:20 a.m.	(2)	**Revenue Generated from State Trust Lands** —Aubrey Dunn, Commissioner of Public Lands, State Land Office (SLO) —Sandra D. Lopez, Assistant Commissioner for Administrative Services, SLO
12:20 p.m.		**Approval of Minutes**
12:25 p.m.		**Lunch**
1:30 p.m.	(3)	**Retirement Income Security Task Force (RISTF) Report** —Tim Eichenberg, State Treasurer; Chair, RISTF —Dr. Jeffrey Mitchell, Director, Bureau of Business and Economic Research, University of New Mexico
2:45 p.m.	(4)	**Alternatives to Defined Benefit Pension Plans; Defined Benefit Pension Plan Reforms Across States** —Luke Martel, Group Director, National Conference of State Legislatures
3:45 p.m.	(5)	**Tool for Evaluating Pension-Related Legislative Proposals** —Joe Newton, Actuary, Gabriel, Roeder, Smith & Company

4:45 p.m.	(6)	**Educational Retirement Board (ERB) Sustainability Survey Results** —Jan Goodwin, Executive Director, ERB
5:15 p.m.		**Public Comment**
5:30 p.m.		**Adjourn**

MINUTES
of the
FOURTH MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

October 16, 2018
State Capitol, Room 307
Santa Fe

The fourth meeting of the Investments and Pensions Oversight Committee was called to order by Representative Tomás E. Salazar, chair, on October 16, 2018 at 10:00 a.m. in Room 307 of the State Capitol.

Present	**Absent**
Rep. Tomás E. Salazar, Chair	Rep. Miguel P. Garcia
Sen. George K. Munoz, Vice Chair	Sen. Steven P. Neville
Sen. Jacob R. Candelaria	
Sen. Gay G. Kernan	
Sen. Carroll H. Leavell	
Rep. Jane E. Powdrell-Culbert	
Rep. William "Bill" R. Rehm	
Rep. Patricia Roybal Caballero	
Sen. John M. Sapien	
Rep. Larry R. Scott	
Sen. Elizabeth "Liz" Stefanics	
Rep. Jim R. Trujillo	

Advisory Members

Sen. Carlos R. Cisneros	Sen. William F. Burt
Rep. Roberto "Bobby" J. Gonzales	Sen. Mary Kay Papen
Sen. Stuart Ingle	Sen. William H. Payne
Rep. Bill McCamley	Sen. James P. White
Rep. Sheryl Williams Stapleton	

Guest Legislator
Sen. Mark Moores

Staff
Tessa Ryan, Staff Attorney, Legislative Council Service (LCS)
Kathleen Dexter, Researcher, LCS
Nancy Martinez, Staff, LCS

Guests
The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and posted on the legislature's website.

Tuesday, October 16

Education Trust Board (ETB) Update

Barbara Damron, Ph.D., secretary, Higher Education Department, and chair, ETB; Ted Miller, J.D., executive director, ETB; and Kay Ceserani, managing director, Pension Consulting Alliance, LLC (PCA), gave an update on college savings programs available through the ETB.

The ETB administers two 529 college savings programs: The Education Plan and Scholar's Edge, which account for 23 percent and 77 percent of ETB assets, respectively. As of June 30, 2018, combined assets in the program portfolios totaled approximately $2.5 billion; nearly $440 million of that total was held in New Mexico resident accounts, which had an average account balance of slightly more than $20,000. Between the two 529 programs, participants have a range of investment risk options, from conservative to aggressive. PCA regularly monitors and reviews all investments and produces a quarterly "watch list" of funds in the portfolios whose performance dips. Overall, most portfolios to date have produced returns that meet or exceed expectations and peer medians.

Many of the accounts in the ETB 529 programs are established by out-of-state residents. In addition to families setting up their own accounts, the National Junior Honor Society recently chose to participate in The Education Plan's annual grant program for middle school students, an affiliation that has resulted in 1,417 new accounts opened and more than $225,000 in contributions made in addition to the grant awards. The presenters noted that such out-of-state participation in the 529 programs serves to reduce costs for New Mexico participants.

As originally established, 529 accounts were designated for higher education expenses. Under changes to federal law that became effective in December 2017, 529 account funds now may also be used for private school tuition and expenses in kindergarten through grade 12 (K-12) and may be rolled into an account established under the federal Achieving a Better Life Experience, or ABLE, Act. Under both federal and New Mexico law, contributions to 529 accounts are tax deductible; however, the Taxation and Revenue Department issued an advisory letter to the ETB stating that the New Mexico tax deduction applies solely to contributions for "qualified higher education expenses" and that state deductions claimed on contributions for other purposes are subject to recapture.

Over the past few years, the ETB negotiated for a 41 percent reduction in program management fees, which are paid by program participants and came to just under $2 million in fiscal year (FY) 2018. Also in FY 2018, the ETB eliminated fees formerly charged on small accounts, eliminated the $25.00 minimum contribution requirement and reduced commissions. In the coming fiscal year, the ETB plans to pursue further fee reductions, increase its outreach efforts, enhance its website and make Scholar's Edge a more compelling choice for investment advisors. The presenters also noted that they would like to create a grant program similar to 529 grant programs available in other states; however, the statute that established New Mexico's 529 programs does not provide authority to establish a grant program.

On questioning, the presenters and committee members addressed the following topics.

Equipment. Equipment used in any post-secondary educational program is a qualified expense in a 529 program.

ETB overhead and contracts. The ETB has enhanced its contractual services to reduce costs. Under its contract to monitor investments, PCA monitors more than 70 portfolios and 50 mutual funds. A member expressed concern that having such a large number of funds within the 529 programs increases the cost of monitoring and reviewing. Secretary Damron stated that she is not willing to serve as ETB president without a strong investment monitoring program.

529 accounts. New Mexico 529 account holders tend to establish their accounts when a child is four to six years old, which is earlier than the national average. Establishing an account early dampens the investment risk over time.

Accounts in The Education Plan are split equally between New Mexico resident accounts and out-of-state accounts. Approximately 80 percent of the accounts in Scholar's Edge, which is managed by brokers, are out-of-state accounts.

Grant program. Unlike legislative lottery scholarships, which are paid to the higher education institution a recipient attends, a 529 program grant would go to the student.

Investment choices. Many 529 account holders invest in the most aggressive, highest-risk track when making their own choices.

Tax deduction. If the state chooses to expand the tax deduction for 529 accounts to include contributions for K-12 education expenses or transfers to ABLE accounts, it would not be bound to include both purposes; it could include one without the other.

Secretary Damron agreed to:

(1) analyze federal law concerning individual development accounts to ascertain whether funds from such accounts can be transferred to 529 accounts and will also review state law for any changes necessary to facilitate these transfers; and
(2) look into reviving the 529 program television ads.

Representative Powdrell-Culbert stated that she would like to sponsor legislation to authorize a 529 grant program.

State Land Office (SLO) Update

Aubrey Dunn, commissioner of public lands, and Sandra D. Lopez, assistant commissioner for administrative services, SLO, reported on revenue generated by state trust lands in the past year and on extractive industry impacts to those lands.

The SLO manages two funds that receive revenue from industries operating on state land:

- the State Lands Maintenance Fund, which received $161.5 million in FY 2018 from renewable resources such as leases, rights of way and interest; and
- the Land Grant Permanent Fund, which received $690.4 million in FY 2018 from nonrenewable resources such as land sale proceeds and oil, gas and mineral extraction.

Revenue to the State Lands Maintenance Fund in FY 2018 was more than double the revenue seen in FY 2016, mostly due to oil and gas lease bonuses, and oil production on state trust lands topped seven million barrels per month by July 2018. Leases for grazing and renewable energy production, such as wind and solar, also generate income for the fund; however, Commissioner Dunn noted that wind energy, if fully developed across all state trust lands, would likely generate only 3.5 percent of the revenue currently generated by oil and gas industry activities.

Of the $828 million distributed from the State Lands Maintenance Fund and the Land Grant Permanent Fund in FY 2018, nearly $700 million went to public schools, with the balance distributed to state institutions and agencies designated as beneficiaries in the Constitution of New Mexico.

The Ogallala Aquifer, which lies beneath a large portion of southeastern New Mexico, is dropping by approximately one foot per year as water is used by oil and gas companies for hydraulic fracturing, or "fracking". In addition to reducing the water supply, fracking results in large quantities of "produced water" — water that has been used to extract oil and gas and that requires safe disposal. Some oil and gas companies have begun cleaning and reusing produced water. Commissioner Dunn urged the committee to consider creating a water reuse tax incentive as a way to encourage this practice and protect the region's water supply.

Commissioner Dunn cited several examples of the oil and gas industry being "out of control": illegal dumping, trespass, abandoned wells, spills, oil theft and lack of remediation on abandoned sites and wells. He noted that the Oil Conservation Division of the Energy, Minerals and Natural Resources Department is seriously understaffed and unable to adequately regulate the oil and gas industry, especially with the boom in drilling activities in the past few years.

Commissioner Dunn cited several of the SLO's accomplishments in FY 2018, including: 1) reducing the turnaround time for right-of-way applications from 300 days to less than 50 days; 2) renegotiating game and fish easements; 3) opening an additional 50,000 acres of state lands to hunters; 4) finalizing a land exchange with the Pueblo of Cochiti; and 5) highlighting industrial water use and conservation as economic issues. He also noted that during his time as commissioner of public lands, the SLO has remediated 51,000 acres of state lands, removing more than 700 tons of trash illegally dumped on those lands.

On questioning, the presenters and committee members addressed the following topics.

Permits. The SLO issues right-of-way permits, and the Oil Conservation Division issues drilling permits. The SLO is required to conduct an environmental survey, archaeological review and endangered species review prior to issuing a right-of-way permit. Texas issues permits more quickly because it does not conduct these reviews. Right-of-way permits issued by the federal Bureau of Land Management (BLM) take more than a year to process. Right-of-way permits for New Mexico state trust lands cost less than the market rate for permits for private land.

Oil Conservation Division. Some appropriations to the Oil Conservation Division that were meant for capping abandoned wells have been used to cover staffing costs. Members and presenters spoke of the need to fully staff and fund the division and to make salaries competitive with those offered by the oil and gas industry.

Pipelines. Establishing a single major right of way for pipelines on state trust lands would be less effective than pushing the BLM to speed up its process for issuing right-of-way permits over federal lands.

It is more cost-effective for oil and gas companies to flare their wells than to build a pipeline to transport the gas for sale.

Water. The amount of produced water generated annually by fracking operations in the state is enough to fill Elephant Butte Reservoir. A tax incentive to clean and reuse this water would reduce the need for underground disposal.

Commissioner Dunn suggested that the state engineer and attorney general file a lawsuit against Texas over capture of water in the Ogallala Aquifer just over the state line for resale to New Mexico-based fracking operations.

Renewable energy. Members and presenters spoke of the need to increase lease rates for transmission lines and the possibility that counties and the state might charge override fees on these lines.

Reclamation bonds are required under leases for wind energy production. Bond amounts are based on the cost of tearing down a wind turbine and grinding its concrete pad.

Recommendations. Commissioner Dunn recommended the following changes:

- increase the bonding amount required for oil and gas activities;
- give the SLO increased control over siting of on-lease activities;
- increase the funding for and staffing of the Oil Conservation Division and the Department of Environment;
- improve funding for remediation efforts;
- oppose federal efforts to shut down wind farms near military flight patterns; and
- increase setback requirements for renewable energy facilities.

Senator Leavell stated that he will work with Commissioner Dunn on legislation to provide a water reuse tax incentive to oil and gas companies.

Minutes

On a motion duly made, seconded and unanimously adopted, the committee approved the minutes of its August 10, 2018 meeting.

Retirement Income Security Task Force

Tim Eichenberg, state treasurer, and chair, Retirement Income Security Task Force; Dr. Jeffrey Mitchell, director, Bureau of Business and Economic Research, University of New Mexico (UNM); and Senator Bill Tallman presented the final recommendations of the Retirement Income Security Task Force, which was formed in response to Senate Joint Memorial 12 (2017 regular session). The joint memorial directed the task force to study New Mexicans' ability to retire in a financially secure manner and to evaluate retirement savings options for those who have limited or no access to employment-based retirement savings arrangements.

The presenters opened with some principal findings that the task force used in its work.

- When New Mexico workers have access to employer-based retirement plans in the private sector, they are as likely as all U.S. workers to participate in those plans; however, only 34 percent of the state's private-sector workers have access to such plans, compared with 42 percent of private-sector workers nationwide.
- In the age group 50 years and older, 56 percent of employed New Mexicans have no retirement savings and only 27 percent have $10,000 or more in savings.
- By 2040, the number of New Mexicans who are over 60 years old is projected to increase to more than 600,000, two-thirds of whom will have less than $10,000 in retirement savings.
- Sixty-seven percent of New Mexico's private-sector workers have no savings for retirement at all.
- Thirty percent of New Mexico's social security recipients are living on social security benefits alone, which average $13,900 per year.

Defined benefit plans, such as those in New Mexico's public employee retirement systems, are much less common now than defined contribution plans, such as 401(k) plans. Defined contributions offer an advantage for employers over defined benefit plans — limited and predictable cost. The major drawback to these plans affects employees. The plans provide a significantly lower percentage of what a retiree needs for expenses, and employees must put aside additional savings.

In 2017, AARP New Mexico conducted a survey of small business owners and employers regarding retirement plans. Seventy-five percent of the respondents said that they feel the state should be doing more to encourage people to save for retirement. Suggestions for state involvement that received strong bipartisan support from respondents included: 1) legislation to make it easier for small businesses to offer retirement plans; and 2) legislation to create a basic, privately managed, "ready-to-go" retirement option.

In considering possible retirement plan solutions for New Mexico, the task force centered its discussions on certain principles, notably that a plan should be accessible, automatic, self-sustaining and portable, with low fees for participants and low cost for employers, and that would provide a reliable retirement income. The task force studied what other states are doing and found four main structures:

- marketplace — the state vets private-sector retirement plan options and hosts an online portal to provide access to the plans, with voluntary employer participation;
- multiple-employer plan — the state authorizes multiple employers to establish a single 401(k) retirement plan;
- voluntary state individual retirement account (IRA) — participation is voluntary for both employers and employees; and
- automatic IRA — employees are automatically enrolled in an IRA plan but may opt out; employers are required to participate but have no fiduciary or contribution responsibility.

The task force's final recommendations are that:

- the state expand financial literacy programs;
- State Treasurer Eichenberg seek an attorney general advisory opinion on matters concerning IRA programs; and
- the state consider offering a hybrid retirement system for private-sector employees that combines a marketplace and a voluntary state IRA program, with the possible conversion of the voluntary IRA program to an auto-enroll IRA program.

On questioning, committee members and the presenters, who were joined by Gene Varela, state director, AARP New Mexico, addressed the following topics.

Financial literacy. The financial literacy initiatives included in the task force's final report are as yet unfunded. AARP New Mexico is willing to provide financial literacy programs.

Access and participation. Part-time employees have less access to retirement plans than full-time employees, and a large proportion of New Mexico workers are in this category.

Employee participation is lower in plans that allow employees to opt out. Employer participation can be costly; members spoke of the current state and federal employer tax deductions for contributions to retirement plans and noted that they are not a strong incentive for employers to participate. A member spoke in favor of creating a tax deduction for payments made by employers to match employee IRA contributions, so long as the private sector manages the accounts rather than the state playing a role.

Self-employed workers. The task force did not resolve the issue of how self-employed workers, which is the fastest-growing segment of the workforce, might participate in a state private-sector retirement plan.

Alternatives to Defined Benefit Pension Plans

Luke Martel, director, Employment, Labor and Retirement Program, National Conference of State Legislatures, reported on defined benefit plan reform efforts in other states.

In 2017, 148 pension-related bills were signed into law around the country, and so far in 2018, more than 700 bills have been introduced. Forty-eight states, including New Mexico, have revised their retirement plans in the past decade to address growing unfunded liabilities, which mostly have been caused by less-than-expected investment returns. Of those states, 10 replaced their defined benefit plans with other structures, including defined contribution plans, cash balance plans, hybrid plans and choice plans. Five more states will follow suit in 2019.

Defined contribution plans were originally offered to employees as a way for them to manage their own retirement savings and take advantage of what was, before the Great Recession of 2008, a rapidly rising stock market. After the recession, however, employers turned to these plans as a way to avoid unfunded liabilities and investment and mortality risk. A 2015 study conducted by the Colorado state auditor determined that defined contribution plans do not provide the same level of retirement income as defined benefit plans, in part because the latter plans have larger investment portfolios that are better suited to managing risk over time.

New Mexico has joined the majority of states in making certain changes to retirement systems since the Great Recession, including increased employee contribution levels, a move that was rare among states prior to the recession; increased age and service requirements for new members; and reductions in post-retirement benefit increases such as cost-of-living adjustments (COLAs).

On questioning, Mr. Martel noted that 70 percent of public workers in states with defined benefit plans are also covered by social security.

Mr. Martel agreed to provide:

(1) a brief prepared by the National Association of State Retirement Administrators on COLAs in retirement systems nationwide; and
(2) job-to-job comparison information between state and federal retirement systems.

Pension-Related Proposal Evaluation

Joe Newton, actuary, Gabriel, Roeder, Smith & Company, outlined general steps to be taken as New Mexico reforms its pension systems.

In addition to taking standard problem-solving steps, such as defining the issues and brainstorming solutions, Mr. Newton noted that the legislature must consider:

- human capital goals — what the stakeholders hope to accomplish, such as employee retention, employee attraction or retirement security;
- fringe risks — intergenerational equity, longevity protection and investment risk and reward;
- macro issues — funding policies, plan structures and the magnitude and schedule of change; and
- stress tests for the new plan — projections based on varied investment returns and contribution rates.

Mr. Newton cautioned that the legislature's pension reform efforts will create friction, and he urged the committee to address this by bringing all stakeholders to the discussions. He also urged the committee to work toward an unfunded actuarial accrued liability of no more than 20 percent and, in doing so, to stay in the "aggregate trust model" — plans that aggregate investments, such as defined benefit plans do — because this will produce the best investment results and benefit not only retirees but the state's economy.

On questioning, Mr. Newton noted that frequent small adjustments to a pension plan, such as adjustments to COLAs, can be very effective. He cited Wisconsin's pension plan, in which COLAs are not fixed but, rather, are based on investment returns averaged over five years.

Educational Retirement Board (ERB) Member Survey

Jan Goodwin, executive director, ERB, reported on the results of a survey conducted to assess ERB members' attitudes about possible retirement system revisions to improve sustainability.

After conducting several meetings around the state in late 2017 to educate ERB members on the retirement system's financial status and the need for reform, the ERB surveyed all members and employers on possible plan changes. Proposed changes that received the strongest support from respondents included:

- a phased-in three percent increase in the employer contribution rate;
- a five-year COLA suspension with a hold harmless provision for the longest-serving members at the lowest salaries;
- a tiered benefit multiplier; and
- ERB contributions on salary earned during retirement by both ERB retirees and employers and by Public Employees Retirement Association retirees working for ERB employers.

On questioning, committee members and Ms. Goodwin, who was joined by Rod Ventura, general counsel, ERB, addressed the following topics.

COLAs. The ERB has decided not to pursue a COLA suspension and, instead, is considering lowering the COLA.

Return to work. The return to work provision was originally enacted to address a teacher shortage, but it is primarily administrators who are taking advantage of this provision. Ms. Goodwin spoke in favor of allowing the return to work provision to sunset and, instead, increasing compensation for education employees.

Fundedness. The ERB is considering a package of reforms that will get the ERB fully funded within 24 years. The current projection for the ERB to be fully funded is 61 years.

Union litigation liability. As part of a tentative settlement that the ERB has reached in a suit brought by unions over member contribution swaps made in previous years, the ERB will make a request to the legislature for $248 million to cover its liabilities in this matter.

Public Comment

Dubra Karnes-Padilla, board member, UNM Retiree Association, read a statement from the association in opposition to changes to the ERB COLAs and proposing, instead, that a task force be convened to study ERB finances, practices, structure and term limits and to address the inequity between the state's public pension systems.

Adjournment

There being no further business, the committee adjourned at 5:55 p.m.

Revised: November 20, 2018

TENTATIVE AGENDA
for the
FIFTH MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

November 26, 2018
State Capitol, Room 307
Santa Fe

Monday, November 26

9:30 a.m.		**Call to Order and Welcome** —Representative Tomás E. Salazar, Chair —Senator George K. Munoz, Vice Chair
9:35 a.m.	(1)	**Retiree Health Care Authority (RHCA): Proposed Legislation** —David Archuleta, Executive Director, RHCA —Tom Sullivan, President, RHCA Board
10:35 a.m.	(2)	**Educational Retirement Board (ERB): Proposed Legislation** —Jan Goodwin, Executive Director, ERB —Roderick Ventura, General Counsel, ERB —Mary Lou Cameron, Chair, ERB
12:05 p.m.		**Lunch**
1:30 p.m.	(3)	**Public Employees Retirement Association (PERA): Update on Board Action Concerning Proposed Legislation** —Wayne Propst, Executive Director, PERA —James Maxon, Chair, PERA Board
2:30 p.m.		**Approval of Minutes**
2:35 p.m.	(4)	**Proposed Legislation** —Senator George K. Munoz, Vice Chair
3:05 p.m.	(5)	**Proposed Legislation to Award PERA Service Credit to Certain Elected Officials** —Senator Daniel A. Ivey-Soto
3:35 p.m.	(6)	**State Investment Council (SIC): Proposed Legislation** —Steven K. Moise, State Investment Officer, SIC —Charles Wollmann, Director of Communications and Legislative Affairs, SIC
4:05 p.m.		**Adjourn**

MINUTES
of the
FIFTH MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

November 26, 2018
State Capitol, Room 307
Santa Fe

The fifth meeting of the Investments and Pensions Oversight Committee was called to order by Representative Tomás E. Salazar, chair, on November 26, 2018 at 9:37 a.m. in Room 307 of the State Capitol.

Present
Rep. Tomás E. Salazar, Chair
Sen. George K. Munoz, Vice Chair
Sen. Jacob R. Candelaria
Rep. Miguel P. Garcia
Sen. Steven P. Neville
Rep. Jane E. Powdrell-Culbert
Rep. Patricia Roybal Caballero
Sen. John M. Sapien
Rep. Larry R. Scott
Sen. Elizabeth "Liz" Stefanics
Rep. Jim R. Trujillo

Absent
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. William "Bill" R. Rehm

Advisory Members
Rep. Roberto "Bobby" J. Gonzales
Rep. Bill McCamley
Rep. Sheryl Williams Stapleton
Sen. James P. White

Sen. William F. Burt
Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Mary Kay Papen
Sen. William H. Payne

Staff
Tessa Ryan, Staff Attorney, Legislative Council Service (LCS)
Nancy Martinez, Staff, LCS
Sara Wiedmaier, Research Assistant, LCS

Minutes Approval
Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Guests
The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and are posted on the legislature's website.

Monday, November 26

Retiree Health Care Authority (RHCA): Proposed Legislation

David Archuleta, executive director, RHCA, and Tom Sullivan, president, RHCA, presented on the RHCA's work and on legislation proposed for the 2019 legislative session.

Mr. Sullivan discussed the RHCA board's challenges in acting as a fiduciary while also honoring commitments as directed in the Retiree Health Care Act. He explained that the act offers post-employment benefits to public employees to improve their access to health insurance. However, he said that the RHCA board has faced increasing challenges due to past economic downturns. Those circumstances have lead the RHCA board to reduce services, offer fewer program options and raise premiums.

Mr. Sullivan said that the RHCA board would seek legislative approval to change contribution rates of employers and employees to further maintain the solvency of the Retiree Health Care Fund. He said that in the past, the RHCA board received incorrect information from an actuary that suggested that the fund would remain solvent for 25 years, while in actuality, the fund would have become insolvent in seven years. The RHCA board subsequently changed actuaries and has been able to maintain a projected solvency term of 20 years.

Mr. Archuleta provided the committee with an overview of the legislative findings contained in the Retiree Health Care Act. He noted that the purpose of the RHCA is to provide comprehensive core group health insurance for people who have retired from certain public service in New Mexico. Mr. Archuleta additionally provided an overview of the duties and responsibilities of the RHCA board. He said that the RHCA board is composed of 11 members and has powers that include procurement and the ability to adopt rules and procedures pertaining to retiree health care eligibility, participation, enrollment, length of service and other conditions. He said that the RHCA board does not have authority to increase the amounts of active employee and employer contributions to the Retiree Health Care Fund.

Mr. Archuleta stated that contributions to the Retiree Health Care Fund last increased about 10 years ago. The employee and employer contributions increased from 1.95 percent to three percent over a four-year period. A combination of reduced benefits and increased contributions to the fund assisted in sustaining the solvency of the fund.

There are currently 93,349 active participants paying into the retiree health care program administered by the RHCA and 63,167 retiree participants, including spouses and eligible dependents. The average age of a retiree participating in the program is just over 67, while the average enrollment age is just under 61. There are 2,300 members under the age of 55. The retiree health care program includes participation from 302 public employer groups, including schools, state agencies and local government entities.

The fiscal year (FY) 2019 budget for the RHCA is about $332.5 million, and about $3 million is used for the RHCA's operational purposes, including salaries, postage, rent, actuarial studies, financial auditing and paying health care costs. The four major sources of revenue collected by the RHCA are employee and employer contributions, premiums from retirees, distributions from the Tax Administration Suspense Fund and miscellaneous revenue. The RHCA also receives a small amount of interest earnings from the money held in overnight accounts from the State Treasurer's Office (STO).

Investment of the Retiree Health Care Fund is managed by the State Investment Council (SIC). Mr. Archuleta stated that an asset allocation study is conducted each year and includes recommendations on investments. As of September 30, 2018, there was approximately $648 million in that fund. Since 2010, public employee and employer contributions to the fund approximated $241 million, while investment earnings approximated $250 million.

Mr. Archuleta provided the committee with an overview of various retiree health care program benefits. He said that the board adopted a rule change that will become effective on January 1, 2021. The rule change will increase the number of years of service required to receive a maximum subsidy and increase the minimum age required to receive the maximum subsidy to 55.

Mr. Archuleta discussed the requirements of Governmental Accounting Standards Board (GASB) Statement Number 74 and GASB Statement Number 75. He indicated that GASB Statement Number 74 applies to the RHCA, while GASB Statement Number 75 applies to the RHCA's participating employer groups. The report prepared by the RHCA pursuant to GASB Statement Number 74 indicated that the Retiree Health Care Fund had a net other post-employment benefits plan liability of $4.5 billion, or a net position as a percentage of liability of over 11 percent. Pursuant to GASB Statement Number 75, the RHCA reported its liabilities to its employer groups. Those employer groups will include that information on their financial statements. The impact on bonding capacity of those various entities is yet to be determined.

According to Mr. Archuleta, the RHCA conducted a solvency analysis in 2018 that indicated that the RHCA would begin to deficit spend by 2022 to meet benefit payment obligations. At that point, the RHCA would be expected to incorporate the use of Retiree Health Care Fund balances to provide benefits but would also receive revenues of approximately $15.3 million. He said that the projected year of insolvency is 2037, when expenditures are projected to be $1.3 billion. Based on the 2018 analysis, Medicare is expected to have a solvency period through 2026, while the Social Security trust fund is expected to remain solvent through 2034.

Mr. Archuleta provided an overview of previous proposed legislation to increase employer and employee contributions to the fund. For the 2019 legislative session, Mr.

Archuleta said that the RHCA is proposing an incremental increase in total employee and employer contributions from three percent to 4.5 percent over a four-year period. He said that the proposed change would increase the Retiree Health Care Fund balance to over $5 billion in 2049 and favorably impact the fund's solvency. He said that if such legislation is not enacted, solvency alternatives could include conversion of the retiree health care program to a defined-contribution program, elimination of subsidies to spouses and domestic partners, elimination of subsidies for pre-Medicare participants, limited access to care and limited access to prescription drug coverage.

The committee members discussed the following topics with Mr. Archuleta and Mr. Sullivan:

- the intent of the legislation proposed by the RHCA, including the RHCA's intent to continue to maintain the solvency of the retiree health care program for public employees;
- the General Fund impact of the proposed legislation stemming from increased employer contributions but not from any direct appropriations from the General Fund;
- the possible effects of an additional distribution from the Tax Administration Suspense Fund on the solvency of the Retiree Health Care Fund;
- the training and experience of members of the RHCA board;
- the reason for delayed increases in employee contributions in the proposed legislation, including stakeholder input;
- the details of benefits available for spouses and domestic partners;
- the projected solvency period of the Retiree Health Care Fund with the changes proposed by the RHCA;
- the projected percentages of employee contributions compared to employee salaries;
- the various proposals that the RHCA board considered to improve solvency of the Retiree Health Care Fund; and
- the possible steps required to change the retiree health care program to a defined-contribution program and implications of that alternative.

Mr. Archuleta asked for the committee's endorsement of the proposed legislation (.211661.2SA). The committee endorsed the legislation on a vote of eight to one.

Educational Retirement Board (ERB): Proposed Legislation

Jan Goodwin, executive director, ERB, introduced Mary Lou Cameron, chair, ERB, Russell Goff, vice chair, ERB, Tim Eichenberg, state treasurer, and ERB staff members who were present. Ms. Goodwin gave committee members an overview of the ERB's recent work to improve sustainability of the Educational Retirement Fund, including a survey of active and retired members and attendance at retreats on sustainability. The ERB approved a proposal on November 16, 2018 for legislation to allow the Educational Retirement Fund to be fully funded within 30 years.

Ms. Goodwin provided an overview of proposed legislation to members of the committee. The proposed legislation would:

- increase employer contributions by one percent each year for three years to reach 16.9 percent in FY 2022;
- modify the ERB's return-to-work program by changing the payout period from 12 months to six months;
- require Public Employees Retirement Association (PERA) retirees who are working for ERB employers to pay contributions to the Educational Retirement Fund, projected to increase expected contributions by $2.2 million;
- require employers to pay contributions for short-term substitute teachers who exceed a certain percentage of full-time work;
- incorporate a tiered multiplier for new members;
- change the minimum retirement age for new members to 58;
- exclude salary increases for employees with an annual salary of more than $60,000 from a final average salary calculation if the salary increase exceeds 30 percent; and
- make a supplemental appropriation of $248.3 million from the General Fund to the Educational Retirement Fund to restore losses to the Educational Retirement Fund resulting from a settlement with the American Federation of State, County and Municipal Employees (AFSCME).

Ms. Goodwin indicated that the proposed legislation would contribute toward the goal of full funding within 30 years.

Roderick Ventura, general counsel, ERB, provided the committee with handouts summarizing the proposed legislation and reviewed the draft legislation with the committee. He provided a detailed review of each of the changes contained in the proposed legislation.

In response to a question, Ms. Goodwin indicated that the cost-of-living adjustment (COLA) for educational retirees is not applied until the later of age 65 or one year after retirement. Ms. Goodwin stated that the COLA is a function of the change in inflation, is tied to the Consumer Price Index (CPI) and has been relatively modest. In 2013, a change in law incorporated a reduction in the COLA until a level of 100 percent funding is reached for the Educational Retirement Fund. Once a level of 100 percent funding is reached, the COLA reductions would cease.

The committee members discussed the following topics with Ms. Goodwin:

- stakeholder involvement in reviewing the elements of the proposed legislation;
- the ability of employers to meet the proposed increased contribution levels;
- possible options to stabilize revenues, including tax increases and reforms;
- the employer contribution levels for educational retirement programs in other states;

- whether contributions to the Educational Retirement Fund would be required for substitute teachers who are retired teachers;
- the application of multipliers to address solvency and possible consequences in attracting new educational employees;
- possible benefits of providing the ERB with increased discretion to meet solvency goals;
- the effects of unfunded liabilities of the state's pension funds on the state's bond ratings;
- multiplier rates that are applied in other states;
- how investment management fees for the ERB compare to fees for its counterparts in other states;
- the performance of investments of the Educational Retirement Fund;
- the effects of retirement benefit changes on new members versus existing members;
- possible effects of merging the state's retirement plans; and
- whether any specific appropriations to the Educational Retirement Fund would meet specific funding goals.

Ms. Goodwin asked for an endorsement of the proposed legislation (.211437.3SA) from the committee. On a vote of seven to two, the committee endorsed the proposed legislation.

PERA: Update on Board Action Concerning Proposed Legislation

Wayne Propst, executive director, PERA, introduced James Maxon, M.P.A., chair, Public Employees Retirement Board (PERB), and Dominic Garcia, chief investment officer, PERA. Mr. Maxon informed the committee of the work of the PERB to improve solvency of the funds it administers. Mr. Maxon said that during the last couple of years, PERB members held several outreach sessions with PERA retirees and active members around the state. Mr. Maxon indicated that the PERB is working on several ideas to improve solvency, and it hopes to identify a specific solvency plan during a special meeting scheduled in December. In February, the board adjusted its investment portfolio strategy as part of a strategy to address solvency.

Mr. Propst provided the committee with funding projections. He indicated that PERA funds are projected to be 74.4 percent funded by 2043, decreased from a previous projection of 77.1 percent.

Mr. Propst noted that the PERA's $6 billion unfunded liability as of the end of FY 2018 continues to pose a challenge, in addition to the low-investment-return environment that is expected to continue over the next 10 years.

Mr. Garcia reviewed the history of the PERA's unfunded liability. He said that in the late 1990s, the PERA increased unfunded benefit enhancements. However, he stated that economic conditions were unfavorable at that time and resulted in rates of return of 6.7 percent on investments over a 20-year period. Mr. Garcia stated that during that time frame, the PERA continued to pay a three percent fixed COLA, which exceeded the CPI and fund earnings. Mr.

Garcia noted that the COLA was reduced to two percent in 2013. Mr. Garcia added that while the PERA's contribution rates rank among the highest in the country, those rates still are not meeting the actuarial costs of retirement benefits.

Mr. Garcia discussed the cash flow status of the PERA funds. He stated that since PERA trust funds are mature, the PERA pays out more in benefits than it receives in contributions. The funds currently have a negative cash flow of 3.75 percent. Assuming the funds receive a 7.25 percent return each year, negative cash flows would begin to approach 5.5 percent around 2033. However, existing pension reforms would begin to yield positive cash flows around 2039. Mr. Garcia indicated that to maintain a 75 percent funded ratio, the PERA would need to achieve an 11 percent return each year. Mr. Garcia said achievement of such an investment return each year is unlikely.

Mr. Propst provided the committee with information on specific contribution levels that would be needed to increase the funding ratios of the various PERA funds and plans. He also listed the amortization periods for PERA funds and plans.

Mr. Propst discussed some options that the PERB has considered. It has reviewed the impact of a two percent contribution increase to be shared by state employers and employees, not including participants in the state police and adult correctional officer member retirement plans. He indicated that the PERB has also examined a possible three-year COLA freeze or a $100 million lump-sum payment from the state for the PERA's state general member plans.

The committee members discussed the following topics with PERA staff and with Mr. Maxon:

- possible effects of pension plan unfunded liabilities on the state's bond ratings;
- the possibility of restructuring existing PERA pension plans;
- contribution rates for municipal and county employees and employers;
- the effects of reducing contributions toward certain plans upon the solvency of other plans;
- possible effects of tying COLAs to the CPI or to investment returns;
- an examination of benefit adjustments when COLAs exceed the CPI;
- the PERA's projected $8.9 million in losses from the pension swap resulting from litigation with AFSCME;
- the portions of the PERA's unfunded liability attributable to each of its pension plans; and
- funding levels of PERA funds under various scenarios.

Minutes

On a motion duly made, seconded and unanimously adopted, the committee approved the minutes of its October 16, 2018 meeting.

Proposed Legislation

Senator Munoz presented legislation that proposes to allow the PERA to reduce certain pension benefits and COLAs and increase contribution rates to improve the actuarial soundness of the PERA program. Under limited circumstances, the legislation would additionally provide for an automatic suspension of COLAs.

Committee members discussed the following topics:

- the authority that would be provided to the PERB to make adjustments pursuant to the proposed legislation and the possible effects;
- the possibility of providing broader authority to other retirement system boards for the purpose of making adjustments similar to those proposed for the PERA;
- the benefits of examining options that other states are exercising to improve pension fund solvency;
- how various factors might impact COLAs;
- representation of public employees on the PERB; and
- constitutional implications of proposed legislation.

Senator Munoz did not ask for a committee endorsement for the proposed legislation, but he indicated that he intends to present the draft legislation as a possible option for pension reform. He reiterated that providing increased flexibility to the PERB would allow it to make decisions to improve pension fund solvency.

SIC: Proposed Legislation

Steven K. Moise, state investment officer, SIC, introduced Robert "Vince" Smith, deputy state investment officer, SIC, and Charles Wollmann, director of communications and legislative affairs, SIC. Mr. Moise discussed a proposal to transfer the authority to invest the Tax Stabilization Reserve to the SIC. Pursuant to current law, the STO manages the investment of the fund. Mr. Moise indicated that the STO typically makes short-term investments, with an investment period of less than one year. He indicated that the SIC may be able to yield higher investment earnings, as it makes longer-term investments. The reserve balance is estimated grow to approximately $150 million in 2019. Until the balance increases to an amount over $700 million, Mr. Moise said that the required liquidity of the fund can be maintained with normal cash flows.

Mr. Smith provided the committee with an overview of the various risk levels and volatility levels for different possible investment portfolios for the reserve. Based on the portfolios available, Mr. Smith indicated that an expected volatility rate for investment of the Tax Stabilization Reserve could lie between 3.85 and 4.38 percent. By comparison, he indicated that the pension funds have volatility rates of about 10 or 11 percent, while the permanent funds invested by the SIC have volatility rates of about 13 percent. If the proposed legislation is adopted, an investment portfolio would be presented to the SIC for approval. In response to a question from a committee member, State Treasurer Tim Eichenberg indicated that he was not opposed to the proposal.

Dawn Iglesias, economist, Legislative Finance Committee, commented that since the Tax Stabilization Reserve is managed by the STO, interest on the reserve's cash balances must be transferred to the General Fund. A transfer in management would allow interest earnings to contribute to the balance of the reserve.

The committee members discussed the following topics:

- liquidity of certain types of investments and cash allocations;
- risk management;
- the SIC's involvement in making asset allocation decisions; and
- the possibility of allowing interest earnings to contribute to the Tax Stabilization Reserve balance.

Mr. Moise asked the committee to endorse the legislation. Upon a motion made and duly seconded, the committee members present unanimously voted to endorse the legislation.

Public Comment

Lenora Chavez, PERA retiree, commented that she was opposed to the proposed PERA solvency recommendations and expressed a desire for increased transparency and accuracy of available information. She proposed that the state's pension plans be comprehensively reviewed.

Loretta Naranjo-Lopez, member, PERB, commented that PERA members have provided feedback to the PERB advising that no changes should be made to the COLAs or to contributions. Ms. Naranjo-Lopez suggested that an investment-based solution to pension fund solvency be explored. To improve transparency, she proposed an internal audit of assumptions affecting the pension funds.

Gerald L. Chavez, executive director, Retired Public Employees of New Mexico, commented that solvency reforms in 2013 were a result of the 2008 recession and were urgently needed at that time. He indicated that there is not currently the same urgency or need to rush a decision to improve solvency. He additionally commented that membership of the PERB should include increased retiree representation.

Adjournment

There being no further business, the committee adjourned at 3:55 p.m.

ENDORSED LEGISLATION

HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO RETIREE HEALTH CARE; INCREMENTALLY INCREASING RATES OF EMPLOYEE AND EMPLOYER CONTRIBUTIONS TO THE RETIREE HEALTH CARE FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-7C-15 NMSA 1978 (being Laws 1990, Chapter 6, Section 15, as amended by Laws 2009, Chapter 287, Section 2 and by Laws 2009, Chapter 288, Section 3) is amended to read:

"10-7C-15. RETIREE HEALTH CARE FUND CONTRIBUTIONS.--

A. Following completion of the preliminary contribution period, each participating employer shall make contributions to the fund pursuant to the following provisions:

(1) for participating employees who are not members of an enhanced retirement plan, the employer's

contribution shall equal, for fiscal year:

[~~(a) one and three-tenths percent of each participating employee's salary for the period from July 1, 2002 through June 30, 2010;~~

~~(b) one and six hundred sixty-six thousandths percent of each participating employee's salary for the period from July 1, 2010 through June 30, 2011;~~

~~(c) one and eight hundred thirty-four thousandths percent of each participating employee's salary for the period from July 1, 2011 through June 30, 2012; and~~

~~(d)~~] (a) 2019, two percent of each participating employee's salary [~~beginning July 1, 2012~~];

(b) 2020, two and one-half percent of each participating employee's salary; and

(c) 2021 and subsequent fiscal years, three percent of each participating employee's salary;

(2) for participating employees who are members of an enhanced retirement plan, the employer's contribution shall equal, for fiscal year:

[~~(a) one and three-tenths percent of each participating employee's salary for the period from July 1, 2002 through June 30, 2010;~~

~~(b) two and eighty-four thousandths percent of each participating employee's salary for the period from July 1, 2010 through June 30, 2011;~~

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~~(c) two and two hundred ninety-two thousandths percent of each participating employee's salary for the period from July 1, 2011 through June 30, 2012; and~~

~~(d)~~] (a) 2019, two and one-half percent of each participating employee's salary [~~beginning July 1, 2012~~];

(b) 2020, three percent of each participating employee's salary; and

(c) 2021 and subsequent fiscal years, three and one-half percent of each participating employee's salary; and

(3) each employer that chooses to become a participating employer after January 1, 1998 shall make contributions to the fund in the amount determined to be appropriate by the board.

B. Following completion of the preliminary contribution period, each participating employee, as a condition of employment, shall contribute to the fund pursuant to the following provisions:

(1) for a participating employee who is not a member of an enhanced retirement plan, the employee's contribution shall equal, for fiscal year:

[~~(a) sixty-five hundredths of one percent of the employee's salary for the period from July 1, 2002 through June 30, 2010;~~

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~~(b) eight hundred thirty-three thousandths of one percent of the employee's salary for the period from July 1, 2010 through June 30, 2011;~~

~~(c) nine hundred seventeen thousandths of one percent of the employee's salary for the period from July 1, 2011 through June 30, 2012; and~~

~~(d)~~] (a) 2019 through fiscal year 2021, one percent of the employee's salary [~~beginning July 1, 2012~~];

(b) 2022, one and one-fourth percent of the employee's salary; and

(c) 2023 and subsequent fiscal years, one and one-half percent of the employee's salary;

(2) for a participating employee who is a member of an enhanced retirement plan, the employee's contribution shall equal, for fiscal year:

[~~(a) sixty-five hundredths of one percent of the employee's salary for the period from July 1, 2002 through June 30, 2010;~~

~~(b) one and forty-two thousandths percent of the employee's salary for the period from July 1, 2010 through June 30, 2011;~~

~~(c) one and one hundred forty-six thousandths percent of the employee's salary for the period from July 1, 2011 through June 30, 2012; and~~

~~(d)~~] (a) 2019 through fiscal year 2021,

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one and one-fourth percent of the employee's salary [~~beginning July 1, 2012~~];

(b) 2022, one and one-half percent of the employee's salary; and

(c) 2023 and subsequent fiscal years, one and three-fourths percent of the employee's salary; and

(3) as a condition of employment, each participating employee of an employer that chooses to become a participating employer after January 1, 1998 shall contribute to the fund an amount that is determined to be appropriate by the board. Each month, participating employers shall deduct the contribution from the participating employee's salary and shall remit it to the board as provided by any procedures that the board may require.

C. [~~On or after July 1, 2009~~] No person who has obtained service credit pursuant to Subsection B of Section 10-11-6 NMSA 1978, Section 10-11-7 NMSA 1978 or Paragraph (3) or (4) of Subsection A of Section 22-11-34 NMSA 1978 may enroll with the authority unless the person makes a contribution to the fund equal to the full actuarial present value of the amount of the increase in the person's health care benefit, as determined by the authority.

D. Except for contributions made pursuant to Subsection C of this section, a participating employer that fails to remit before the tenth day after the last day of the

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month all employer and employee deposits required by the Retiree Health Care Act to be remitted by the employer for the month shall pay to the fund, in addition to the deposits, interest on the unpaid amounts at the rate of six percent per year compounded monthly.

E. Except for contributions made pursuant to Subsection C of this section, the employer and employee contributions shall be paid in monthly installments based on the percent of payroll certified by the employer.

F. Except in the case of erroneously made contributions or as may be otherwise provided in Subsection D of Section 10-7C-9 NMSA 1978, contributions from participating employers and participating employees shall become the property of the fund on receipt by the board and shall not be refunded under any circumstances, including termination of employment or termination of the participating employer's operation or participation in the Retiree Health Care Act.

G. Notwithstanding any other provision in the Retiree Health Care Act and at the first session of the legislature following July 1, 2013, the legislature shall review and adjust the distributions pursuant to Section 7-1-6.1 NMSA 1978 and the employer and employee contributions to the authority in order to ensure the actuarial soundness of the benefits provided under the Retiree Health Care Act.

H. As used in this section, "member of an enhanced retirement plan" means:

(1) a member of the public employees retirement association who, pursuant to the Public Employees Retirement Act, is included in:

(a) state police member and adult correctional officer member coverage plan 1;

(b) municipal police member coverage plan 3, 4 or 5;

(c) municipal fire member coverage plan 3, 4 or 5; or

(d) municipal detention officer member coverage plan 1; or

(2) a member pursuant to the provisions of the Judicial Retirement Act."

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SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; CHANGING THE TERMS OF RETIREMENT ELIGIBILITY AND THE CALCULATION OF BENEFITS FOR CERTAIN MEMBERS; CHANGING THE TERMS GOVERNING RETIRED MEMBERS WHO RETURN TO EMPLOYMENT WITH AN EDUCATIONAL RETIREMENT BOARD EMPLOYER; INCREASING THE CONTRIBUTIONS OF EDUCATIONAL RETIREMENT BOARD-COVERED EMPLOYERS; CLARIFYING THAT SUBSTITUTE TEACHERS ARE EDUCATIONAL RETIREMENT BOARD-COVERED MEMBERS; TRANSFERRING MONEY TO THE EDUCATIONAL RETIREMENT FUND TO SATISFY A TERM IN THE SETTLEMENT RESULTING FROM *AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 18, AFL-CIO ET AL. V. STATE OF NEW MEXICO ET AL.*; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-11-21 NMSA 1978 (being Laws 1967,

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Chapter 16, Section 144, as amended) is amended to read:

"22-11-21. CONTRIBUTIONS--MEMBERS--LOCAL ADMINISTRATIVE UNITS.--

A. Except as provided in Subsection D of this section, for a member whose annual salary is greater than twenty thousand dollars ($20,000), the member shall make contributions to the fund [~~according to the following schedule:~~

~~(1) from July 1, 2013 through June 30, 2014, the member contribution rate shall be ten and one-tenth percent of the member's annual salary; and~~

~~(2) on and after July 1, 2014~~] at the [~~member contribution~~] rate [~~shall be~~] of ten and seven-tenths percent of the member's annual salary.

B. [~~On and after July 1, 2008~~] For a member whose annual salary is twenty thousand dollars ($20,000) or less, the member [~~contribution~~] shall make contributions to the fund at the rate [~~shall be~~] of seven and nine-tenths percent of the member's annual salary.

C. Except as provided in Subsection D of this section, each local administrative unit shall make an annual contribution to the fund according to the following schedule:

[~~(1) from July 1, 2013 through June 30, 2014, a sum equal to thirteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; and~~

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[~~(2) on and after July 1, 2014, a sum equal to thirteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit;~~]

(1) from July 1, 2019 through June 30, 2020, at the rate of fourteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit;

(2) from July 1, 2020 through June 30, 2021, at the rate of fifteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit; and

(3) on and after July 1, 2021, at the rate of sixteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit.

D. If, in a calendar year, the salary of a member, initially employed by a local administrative unit on or after July 1, 1996, equals the annual compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, then:

(1) for the remainder of that calendar year, no additional member contributions or local administrative unit contributions for that member shall be made pursuant to this section; provided that no member shall be denied service credit solely because contributions are not made by the member or on behalf of the member pursuant to [~~the provisions of~~] this

subsection; and

(2) the amount of the annual compensation limit shall be divided into four equal portions, and, for purposes of attributing contributory employment and crediting service credit, each portion shall be attributable to one of the four quarters of the calendar year."

SECTION 2. A new section of the Educational Retirement Act, Section 22-11-23.3 NMSA 1978, is enacted to read:

"22-11-23.3. [NEW MATERIAL] RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP ON OR AFTER JULY 1, 2019.--A member who initially became a member on or after July 1, 2019 or a member who was a member before July 1, 2019 and had, before that date, been refunded all member contributions in accordance with Subsection A of Section 22-11-15 NMSA 1978 and had not restored all refunded contributions and interest before July 1, 2019, is eligible for retirement benefits when:

A. the member is any age and has thirty or more years of earned service credit;

B. the member is at least sixty-seven years of age and has five or more years of earned service credit; or

C. the sum of the member's age and years of earned service credit equals at least eighty."

SECTION 3. Section 22-11-25.1 NMSA 1978 (being Laws 2001, Chapter 283, Section 2, as amended) is amended to read:

"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS [~~CONTINUED~~]--

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[~~ADMINISTRATIVE UNIT~~] CONTRIBUTIONS.--

A. Except as otherwise provided in Subsections B and F of this section, [~~beginning January 1, 2002 and continuing~~] until January 1, 2022, a retired member [~~may begin~~] who begins employment [~~at~~] with a local administrative unit [~~and shall not be~~] at a level equivalent to one-quarter full-time employee or higher, regardless of salary level, is required to suspend the member's retirement benefits [~~if~~] until the end of that employment unless the member has not rendered service to a local administrative unit for at least [~~twelve~~] six consecutive months after the date of retirement. [~~If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove himself or herself from retirement.~~]

B. Until January 1, 2022, a retired member who [~~was~~] retired on or before January 1, 2001, [~~and~~] has not [~~since~~] suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act [~~may, at any time prior to January 1, 2022, return~~] and returns to employment [~~for~~] with a local administrative unit [~~and shall not be~~] is not required to suspend the member's retirement benefits.

C. A retired member who returns to employment [~~during retirement pursuant to Subsection A, B or F of~~] with a local administrative unit in accordance with this section is

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entitled [~~to continue~~] to receive retirement benefits during that employment but is not entitled to acquire or purchase service credit [~~or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit~~] for that employment.

D. A retired member [~~shall not be eligible to~~] may return to employment [~~pursuant to Subsection A, B or F of this section unless~~] with a local administrative unit only if the member submits an application to return to work, on a form prescribed by the board, [~~has been submitted to, and approved by~~] the board approves the application and the applicant [~~has complied~~] complies with [~~such~~] other application rules [~~as~~] promulgated by the board.

E. A retired member who returns to employment [~~pursuant to Subsection A, B or F of this section~~] in any capacity with a local administrative unit shall [~~pay~~] make nonrefundable contributions to the fund [~~an amount equal to the member contributions that~~] as would be required [~~pursuant to~~] by Section 22-11-21 NMSA 1978 if the retired member [~~was~~] were a non-retired employee. [~~and~~] The local administrative unit employing the retired member shall [~~pay to the fund an amount equal to the local administrative unit~~] likewise make contributions [~~that~~] as would be required [~~pursuant to~~] by that section. [~~Payments made by a retired member pursuant to this subsection shall not be refunded.~~]

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F. [~~Beginning July 1, 2003 and continuing~~] Until January 1, 2022, a retired member who retired on or before January 1, 2001, who [~~subsequently voluntarily~~] suspended or was required to suspend retirement benefits [~~and who has not rendered service to a local administrative unit for at least ninety days, may begin employment at a local administrative unit without suspending~~] under the Educational Retirement Act is not required to suspend the member's retirement benefits if the retired member [~~was not employed by~~] has not rendered service to a local administrative unit for [~~an additional twelve~~] six or more consecutive months, not including any part of a summer or other scheduled break or vacation period, after the initial date of [~~the~~] retirement [~~provided that the ninety-day period shall not include any part of a summer or other scheduled break or vacation period~~].

G. [~~Both the~~] A retired member who returns to employment [~~and the~~] with a local administrative unit [~~that employs the retired member~~] shall make contributions to the retiree health care fund during the period of that employment and in the amount specified in [~~Subsections A and B of~~] Section 10-7C-15 NMSA 1978. The local administrative unit employing the retired member shall likewise make contributions during the period of that employment and in the amount specified in that section.

H. As used in [~~Subsections A and F of~~] this

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section:

(1) "rendered service" [~~to a local administrative unit~~] includes employment [~~by a local administrative unit~~], whether full or part time; substitute teaching; voluntarily performing duties [~~for a local administrative unit~~] that would otherwise be, or in the past have been, performed by a paid employee or independent contractor; [~~or~~] <u>and</u> performing duties [~~for a local administrative unit~~] as an independent contractor or an employee of an independent contractor; and

(2) "local administrative unit" includes any entity incorporated, formed or otherwise organized by, or subject to the control of, a local administrative unit, <u>regardless of</u> whether [~~or not~~] the entity is created for profit or nonprofit purposes."

SECTION 4. Section 22-11-25.2 NMSA 1978 (being Laws 2003, Chapter 248, Section 1) is amended to read:

"22-11-25.2. PERSONS RECEIVING RETIREMENT BENEFITS PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT.--

A. An employee who is retired pursuant to the Public Employees Retirement Act and who has not suspended retirement benefits received pursuant to that act shall [~~not~~] make contributions to the fund as [~~otherwise~~] required [~~in~~] <u>by</u> the Educational Retirement Act. <u>A local administrative unit that employs such a retiree likewise shall make contributions</u>

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to the fund as required by that act.

B. An employee who [~~continues to receive~~] receives retirement benefits pursuant to the Public Employees Retirement Act [~~and who does not make contributions to the fund~~] is not entitled to acquire or purchase service credit [~~or to acquire or purchase service credit in the future~~] for the period of employment with a local administrative unit.

[~~C. Nothing in this section shall affect the obligation of a local administrative unit to make contributions to the fund as required in the Educational Retirement Act.~~]"

SECTION 5. Section 22-11-30 NMSA 1978 (being Laws 1967, Chapter 16, Section 153, as amended) is amended to read:

"22-11-30. RETIREMENT BENEFITS--REDUCTIONS.--

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars ($4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent

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of the first six thousand six hundred dollars ($6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if the member's date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if the member's date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if the member's date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) prior employment; and

(b) allowed service credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) contributory employment;

(b) allowed service credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen-hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Retirement benefits for a member who retires pursuant to Section 22-11-23 NMSA 1978 on or after July 1, 1991 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years but after the member attains the age of fifty-five years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of fifty-five years;

(2) the benefit formula provided in this subsection shall not apply to any member who was retired in any

of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year of earned service credit beginning on or after July 1, 1991; and

(3) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

H. Retirement benefits for a member who retires pursuant to Section 22-11-23.1 NMSA 1978 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23.1 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty-five years but after the member attains the age of sixty years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years; and

(2) a member shall be subject to the

provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

I. Retirement benefits for a member who retires pursuant to Section 22-11-23.2 NMSA 1978 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member retiring pursuant to Paragraph (3) of Subsection A of Section 22-11-23.2 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty-five years but after the member attains the age of sixty years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years; and

(2) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

J. Retirement benefits for a member who retires in accordance with Section 22-11-23.3 NMSA 1978 shall be paid monthly and:

(1) in an amount equal to one-twelfth of the sum of the following:

(a) for the first ten years of the member's service credit, one and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between one-fourth of a year and ten years;

(b) for that portion of the member's service credit earned after ten years of service credit and through twenty years of service credit, two and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between ten and twenty years;

(c) for that portion of the member's service credit earned after twenty years of service credit and through thirty years of service credit, three and thirty-five hundredths percent of the members's average annual salary multiplied by the member's years of service credit between twenty and thirty years; and

(d) for that portion of the member's service credit earned after thirty years of service credit, two and four-tenths percent of the member's average annual salary multiplied by the member's years of service credit over thirty years; or

(2) if the member retires in accordance with:

(a) Subsection A of Section 22-11-23.3 NMSA 1978 and is under fifty-eight years of age, in an amount equal to one-twelfth of the result determined under Paragraph (1) of this subsection, but reduced to the actuarial equivalent, based on what is at the time of the member's retirement the most current set of actuarial factors determined by the board, of the benefit the member would receive if the member had retired at fifty-eight years of age;

(b) Subsection C of Section 22-11-23.3 NMSA 1978 and is sixty years of age or older and under sixty-five, in an amount equal to one-twelfth of the result determined under Paragraph (1) of this subsection, but reduced by sixth-tenths percent for each one-fourth, or portion thereof, year before the member reaches age sixty-five; and

(c) Subsection C of Section 22-11-23.3 NMSA 1978 and is younger than sixty years of age, one and eight-tenths percent for each one-fourth, or portion thereof, year before the member reaches sixty years of age.

[~~J.~~] K. In determining a member's average annual salary [~~pursuant to~~] for purposes of this section:

(1) the data set shall [~~be computed on the basis~~] consist of the annual salary of each of the last five years, [~~for which contribution was made~~] or [~~upon the basis of~~]

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any consecutive five years, for which contribution was made by the member, whichever [~~is~~] produces a higher [~~provided, however, that~~] result; and

(2) lump-sum payments made after July 1, 2010 of accrued sick leave or annual leave shall be excluded from the calculation [~~of salary~~].

L. On and after July 1, 2019, if the member's average annual salary is greater than sixty thousand dollars ($60,000):

(1) the salary in the first twelve months of the five-year period used to determine the average annual salary shall be adjusted to exclude any increase in salary in excess of thirty percent of the salary in the twelve consecutive months of service credit preceding the five-year period; and

(2) the salary in each of the four succeeding twelve-month intervals of the five-year period, as adjusted to exclude any increase in salary in the twelve months preceding each such succeeding twelve-month interval that is in excess of the thirty-percent limitation provided in this subsection, shall be used to determine if the salary in that succeeding twelve-month interval exceeds the thirty-percent limitation and to adjust the salary to exclude any increase in excess of that limitation in determining the average annual salary.

M. On July 1, 2020 and on each July 1 thereafter,

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the salary threshold for applying the thirty-percent limitation provided for in Subsection L of this section shall be adjusted by applying an adjustment factor equal to the change in the consumer price index between the next preceding calendar year and the preceding calendar year if there is an increase in the consumer price index between the next preceding calendar year and the preceding calendar year.

~~K.~~] N. Unless otherwise required by the [~~provisions of the~~] Internal Revenue Code of 1986, [~~members~~] a member shall begin receiving retirement benefits by age seventy years and six months, or upon termination of employment, whichever occurs later."

SECTION 6. Section 22-11-49 NMSA 1978 (being Laws 1991, Chapter 118, Section 7, as amended) is amended to read:

"22-11-49. ALTERNATIVE RETIREMENT PLAN--CONTRIBUTIONS.--

A. [~~Each~~] A participant shall contribute an amount equal to the [~~percent~~] percentage of the participant's salary that the participant would [~~have been~~] be required to contribute [~~as~~] if the participant were, instead, a regular member. The contribution shall be made [~~in the manner~~] as provided [~~for~~] by the board.

B. [~~Each~~] A qualifying state educational institution shall contribute on behalf of each participant an amount of the participant's salary equal to the contribution that would [~~have been~~] be required of the employer if the

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participant [~~was~~] were, instead, a regular member. Of [~~the~~] that contribution [~~made by a qualifying state educational institution on behalf of a participant beginning October 1, 1991, or October 1, 1999, whichever is applicable~~], a sum equal to [~~three percent~~] the following percentage of the annual salary of each participant shall be [~~contributed~~] paid to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board [~~provided, however, that~~]:

(1) for fiscal year:

(a) 2020, four percent;

(b) 2021, five percent; and

(c) 2022 and subsequent fiscal years, six percent; or

(2) if, on July 1 following any report by the actuary to the board that concludes that less than [~~three percent of the contributions made by a qualifying state educational institution on behalf of its participants~~] that percentage is required to satisfy the unfunded actuarial liability attributable to the participation of the participants in the alternative retirement plan, [~~the three percent shall be reduced to~~] then the percentage [~~determined by~~] the actuary determines is the minimum required to satisfy that liability.

C. Contributions required by [~~the provisions of~~] this section may be made by a reduction in salary or by a

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public employer pick-up [~~pursuant to any applicable provision of~~] as provided in the Internal Revenue Code of 1986, as amended."

SECTION 7. A new section of the Educational Retirement Act is enacted to read:

"[NEW MATERIAL] SUBSTITUTE TEACHERS--MEMBERSHIP STATUS.--A substitute teacher who works at a level equivalent to one-quarter full-time employee or higher and who otherwise meets the requirements of membership under the Educational Retirement Act is subject to that act as a regular member."

SECTION 8. TRANSFER.--On July 1, 2019, two hundred forty-eight million three hundred thousand dollars ($248,300,000) is transferred from the general fund to the educational retirement fund to restore the losses to the educational retirement fund caused by changes in law at issue in the lawsuit *American Federation of State, County and Municipal Employees, Council 18, AFL-CIO et al. v. State of New Mexico et al.*, Case No. D-202-CV-2009-07148.

SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.

HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCE; PROVIDING FOR THE INVESTMENT OF MONEY IN THE TAX STABILIZATION RESERVE BY THE STATE INVESTMENT OFFICER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-4-2.2 NMSA 1978 (being Laws 1987, Chapter 347, Section 3, as amended) is amended to read:

"6-4-2.2. GENERAL FUND TAX STABILIZATION RESERVE.--

A. There is created within the general fund the "tax stabilization reserve".

B. The [~~balance of the~~] tax stabilization reserve [~~shall be those funds~~] consists of money directed or appropriated to it by law and [~~such other funds as the legislature may appropriate from time to time to the reserve~~] all income from investment of the reserve. Money in the

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reserve shall be invested by the state investment officer.

C. Except as otherwise provided in Subsection D of this section, any balance of the tax stabilization reserve may be:

(1) appropriated only by a [~~two-thirds~~] two-thirds' majority vote of both houses of the legislature following receipt by the legislature of a declaration of the governor that such an appropriation is necessary for the public peace, health and safety; or

(2) expended by the governor only:

(a) pursuant to an appropriation made by a [~~two-thirds~~] two-thirds' majority vote of both houses of the legislature specifying the amount of the appropriation and the purpose of the expenditure; and

(b) if the governor declares that the expenditure is necessary for the public peace, health and safety.

D. [~~In the event that the~~] If general fund revenues, including all transfers to the general fund authorized by law, are projected by the governor to be insufficient either to meet the level of appropriations authorized by law from the general fund for the current fiscal year or to meet the level of appropriations recommended in the budget and appropriations bill submitted in accordance with Section 6-3-21 NMSA 1978 for the next fiscal year, the balance

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in the tax stabilization reserve may be appropriated by the legislature up to the amount of the projected insufficiency for either or both fiscal years."

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.

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Legislative Council Service
Santa Fe, New Mexico