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

September 5, 2019
State Capitol, Room 322
Santa Fe

The third meeting of the Investments and Pensions Oversight Committee for the 2019 interim was called to order by Senator Elizabeth "Liz" Stefanics, who served as acting chair for the meeting, on Thursday, September 5, 2019, at 9:46 a.m. in Room 322 of the State Capitol in Santa Fe.

Present	**Absent**
Rep. Natalie Figueroa	Sen. George K. Munoz, Chair
Rep. Miguel P. Garcia	Rep. Patricia Roybal Caballero, Vice Chair
Rep. Tomás E. Salazar	Sen. Jacob R. Candelaria
Sen. John M. Sapien	Sen. Gregg Fulfer
Sen. Elizabeth "Liz" Stefanics	Sen. Gay G. Kernan
	Sen. Steven P. Neville
	Rep. William "Bill" R. Rehm

Advisory Members

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

Staff
Anthony Montoya, Staff Attorney, Legislative Council Service (LCS)
Rebecca Griego, Records Officer, LCS
Carrie McGovern, Researcher, LCS

Guests
The guest list is in the meeting file.

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

Thursday, September 5

Update from the Small Business Investment Corporation (SBIC)

Russ Cummins, executive director and investment advisor, SBIC, provided the committee with an update from the SBIC. Formed in 2001, the SBIC does not have an office or any employees, which keeps overhead low, and it is funded by an allocation from the Severance Tax Permanent Fund (STPF). In the 2019 legislative session, Senate Bill 10 was enacted, which increases the SBIC's allocation from the STPF from 1% to 2% and will result in a one-time allocation of $50 million in additional funding that is expected to be received in January 2020. According to Mr. Cummins, the SBIC's main focus since 2011 has been on expanding its lending program. To date, the SBIC has made 4,860 loans totaling $90 million, resulting in 13,310 jobs. In the past 12 months, 70% of the SBIC's loans were awarded to minority-owned businesses and 38% went to female-owned businesses. Mr. Cummins described the SBIC's lending partners, which are nonprofit community development financial institutions (CDFIs) that include the New Mexico Community Development Loan Fund, DreamSpring (formerly Accion), WESST and the Ventana Fund. The SBIC also partners with the New Mexico Mortgage Finance Authority (MFA) to provide low-income multifamily housing in Carlsbad, Roswell, Las Vegas, Kewa Pueblo and the Pueblo of Zuni. Mr. Cummins noted that the Ventana Fund is the SBIC's newest lending partner and has a goal of developing mixed-income multifamily housing in smaller New Mexico communities. Currently, the SBIC's loan commitments with its lending partners total $32.6 million.

Mr. Cummins next reviewed the SBIC's plans for the future, which include expanding with its current lending partners and participating in discussions with potential new partners. These new lending partners may include Homewise, a nonprofit CDFI that has offices in Santa Fe and Albuquerque; the LiftFund, a San Antonio-based nonprofit CDFI that has opened an office in El Paso with the intent to expand small business lending operations in southern New Mexico; the Rural Community Assistance Corporation (RCAC), a Sacramento nonprofit CDFI that provides construction financing for United States Department of Agriculture-guaranteed water and wastewater projects in rural communities; and Advantage Capital, a private lender that would like to expand in New Mexico, that has over $3 billion in loans in 40 states and that typically receives state tax credits to make small business loans.

Questions and comments from committee members addressed the following:

- in the CDFI program, a loan typically has an interest rate of 8%, which is higher than a bank loan due to the personal relationships with borrowers and the fact that these tend to be smaller loans; of this 8%, the SBIC receives 2% of the interest, which covers the SBIC's expenses;
- the New Mexico Community Development Loan Fund has full underwriting authority and full responsibility for loan losses, so the SBIC has had no loan losses with this lending partner; there had been small loan losses with Accion prior to 2013, but a new agreement with a 2% guaranteed rate solved this problem;

- with the new money from the STPF, there is an opportunity to expand with existing partners by $10 million to $15 million and with new lending partners by $15 million to $30 million;
- there are approximately 30 community banks in New Mexico, and of these, there may be 10 in higher-growth areas that could be interested in partnering with the SBIC;
- regarding the potential for partnering with the RCAC for water and wastewater loans, the main concern is that the SBIC must ensure that the borrower receiving the funding from the RCAC meets legislative requirements, which state that a loan must go to a business with its principal office and the majority of its full-time employees located in New Mexico;
- it is not certain whether political subdivisions are included in the definition of "New Mexico business"; this needs to be further researched, as it could affect the granting of loans to rural mutual domestic and acequia associations;
- there are no restrictions on lending partners being headquartered in New Mexico;
- on average, loans turn over about every 2.5 years;
- there have been instances of lending partners making loans to agricultural businesses, such as honey production in Taos and several greenhouses; the SBIC does not dictate what kinds of loans its lending partners enter into, but most loans are five-year loans;
- the RCAC loans are anticipated to be both water and wastewater loans and small business loans, but the SBIC will ensure that these loans meet legislative requirements;
- current partners do engage in real estate loans, which help to provide loans to small businesses that cannot be obtained from banks and will help boost job growth over time;
- the SBIC would like to spend the additional $50 million STPF allocation in the next three years;
- the MFA receives long-term funding from other sources; thus, it partners with the SBIC to get short-term funding that is used to get projects started; and
- the SBIC does not want to compete with banks or governments; it looks for areas where there are gaps in funding.

Update from the Retiree Health Care Authority (RHCA)

David Archuleta, executive director, RHCA, presented to the committee on recent activities at the RHCA. In July 2019, the RHCA held its annual board meeting, during which it made changes for the upcoming year. These changes include a 7% increase in the pre-Medicare plans, a 5% increase in the Medicare Supplement Plan and a range of adjustments in Medicare Advantage plans from -2% to 0%. Mr. Archuleta said that there were also enhancements to the current insurance plans to eliminate the $300 deductible on prescription drugs and cap insulin copayments. Also, the RHCA is in its third year of the basic life insurance phaseout, which will save the authority money. According to Mr. Archuleta, the RHCA currently has 63,956 covered members, with 39,612 in Medicare plans, 15,405 in pre-Medicare plans and 8,939 in voluntary-only plans, which cover life, dental and vision insurance. Beginning July 1, 2019, the RHCA entered into a new standard life insurance contract with an average 3.9% increase across all age brackets, and the RHCA will soon issue a new request for proposals for medical, dental and vision coverage in collaboration with the Interagency Benefits Advisory Committee, he said. In addition, there is a newly formed Interagency Pharmaceuticals Purchasing Council, of which the RHCA is a member, that will study cost-containment strategies.

Mr. Archuleta then discussed the 2019 solvency analysis, which projects that the RHCA will be solvent through 2044 with deficit spending occurring in 2023, which is an improvement over the 2018 projection. This is largely the result of the RHCA increasing its required years of service credit from 20 years to 25 years and setting a minimum age of 55 for participation in the program, changes that will take effect on January 1, 2021. Furthermore, the RHCA's trust fund balance reached a 10-year high of $718 million in June 2019, and contributions into the fund have exceeded investment earnings. The RHCA's funded ratio has improved from 3.62% in 2006 to 13.14% in 2018. Mr. Archuleta noted that while a variety of RHCA board actions have extended solvency, these improvements will end this year, which may mean adjustments going forward. He provided an overview on the effect of the following three scenarios (which would require legislative action) that could improve solvency: 1) a .25% increase in employer contributions; 2) a .5% increase in employer contributions; and 3) a .5% increase in employer contributions and a .25% increase in employee contributions. He stated that although plan participants will likely never pay less for premiums in the future, the board can explore a number of ways to improve the plan's sustainability, including reducing pre-Medicare retiree subsidies and pre-Medicare spousal/domestic partner subsidies. There are alternatives to the plan, which do not have to occur immediately, that could include eliminating subsidies for spouses and domestic partners, eliminating the Medicare Supplement Plan, limiting access to care and converting to a defined contribution program, although Mr. Archuleta noted that none of these are particularly attractive options.

Questions and comments from committee members addressed the following:

- the selection of the minimum age of 55 was carefully thought out, but absent a change in employer and employee contributions, this number may have to be revisited;
- the RHCA board has not taken action on any of the scenarios or alternatives that Mr. Archuleta described;
- the RHCA is not tied up in the Public Employees Retirement Association's (PERA's) unfunded liability but has its own unfunded liability;
- the longer the RHCA waits to make changes to its plans to improve solvency, the more aggressive it will need to be in the future; it will take action by both the RHCA board and the legislature to make the necessary changes;
- law enforcement officers, firefighters, correctional officers and judges are enrolled in an enhanced plan in the RHCA, which allows these members to receive benefits sooner, and they are exempt from the upcoming January 1, 2021 rule changes;
- the RHCA's trust fund is managed by its board, and the State Investment Council provides the board with access to certain pools that can provide investment advice;
- in 2016, the RHCA's actuarial assumption rate was lowered from 7.35% to 7.25%;

- the RHCA's asset allocation is determined by the board and is based on the assessments of the board's investment advisors;
- Hawaii pre-funds its retiree health care benefits instead of paying the benefits as they become due, which helps to ensure that there will be money for future plan participants; a member requested the RHCA to look into the Hawaii model and determine what the catalyst was for changing to pre-funded benefits;
- the last time employer and employee contribution rates were changed was in 2010, and this change was phased in over three years; and
- concern was expressed that potential RHCA, PERA and Educational Retirement Board (ERB) employee contribution increases could negatively impact the lowest-paid retirees.

Legal Analysis and Constitutionality of Altering Cost-of-Living Adjustments (COLAs)

Susan Pittard, chief of staff and general counsel, PERA, Jan Goodwin, executive director, ERB, and Susanne Roubidoux, general counsel, ERB, presented a legal analysis on the constitutionality of changing COLAs. Ms. Pittard began by reviewing the history of the PERA's COLA, which was first awarded in 1965 and varied in amounts until 2013, when a 2% COLA was set with the deferral period to receive a COLA increased from two to seven years, the COLA was suspended for return-to-work retirees during reemployment and a 2.5% COLA was preserved for disability retirees and those with annual pensions less than $25,000. Ms. Pittard referenced a 1998 constitutional amendment mandating that: all assets of the PERA and the ERB be held in a trust fund for the exclusive benefit of their members, retirees and beneficiaries; the PERA's and the ERB's boards of trustees must contract with an independent actuary; and, while the legislature cannot enact laws that increase the plans' benefits or change the retirement funding formulas without adequate funding, the legislature can enact changes that enhance or preserve actuarial soundness. Ms. Pittard also described 2014 judicial and magistrate pension reform provisions, which suspended COLAs for two years and established an independent COLA under the judicial retirement acts.

Regarding the ERB's COLA history, Ms. Goodwin stated that the ERB did not have a regular annual COLA until 1979, when the COLA became based on the change in the Consumer Price Index. Since 1984, the COLA has been an average of 2%. In 2013, the COLA was reduced for all current and future retirees, except disability retirees, in the following manner: until the ERB's fund is greater than 90% funded, retirees with benefits at or below the median and with 25 years or more of service credit have a 10% COLA reduction and all other retirees have a 20% reduction. However, if the fund is greater than 90% funded, retirees with benefits at or below the median and with 25 years or more of service credit have a 5% COLA reduction and the COLAs of all other retirees are reduced 10%. Ms. Goodwin stated that this 2013 COLA reduction led to a lawsuit filed by educational retirees, *Bartlett v. Cameron*. Ms. Roubidoux explained that the retirees sought a writ of mandamus against the ERB compelling it to pay retirees an annual COLA based on the COLA formula in effect on the date of their retirement for the entirety of their retirement. In response, the New Mexico Supreme Court denied the writ, ruling that the COLA is not a retirement benefit but a year-to-year expectation that, until paid, does not create a property right under the Constitution of New Mexico.

Questions and comments from committee members addressed the following:

- while the ruling in *Bartlett* is specifically related to benefits distributed by the ERB, the reasoning is analogous to benefits distributed by the PERA;
- once a COLA is granted, is cannot be taken away, as it becomes part of the constitutionally protected base benefits; however, future applications of COLAs can be modified or not provided at all;
- the PERA's permanent 2.5% COLA for those receiving pensions of less than $25,000 annually was made in response to concerns about elderly retirees; the ERB's formula lowering COLA reductions for those with lower pensions also addresses this concern;
- future COLAs, not existing ones, are likely within the purview of the legislature to change;
- Wisconsin has COLAs dependent on market investment performance; if New Mexico were to implement this idea, it would be a statutory change, not a constitutional one;
- another pension-related court case, *Pierce v. State of New Mexico*, challenged legislation that repealed an income tax exemption for state retirement benefits; the New Mexico Supreme Court found that pension plans do not grant retirees contractual rights, nor do they grant the right to receive tax-exempt pension benefits;
- prior to 2010, the ERB statutes did allow for the possibility of a negative COLA, which would reduce benefits, but the ERB worked with the legislature to eliminate this;
- according to Wayne Propst, executive director, PERA, who was in the audience, Governor Michelle Lujan Grisham's PERA Solvency Task Force has completed its work and finalized recommendations to address solvency; Mr. Propst provided a brief overview of the proposed changes, and a member requested that these recommendations be provided in full to the committee at a future meeting; and
- 1979 was the only year that the PERA's COLA was not compounded.

Public Comment

The chair invited members of the audience to provide public comment. Jeff Varela, public retiree and former member of both the PERA board and the RHCA board, said that while the compounded COLA is a wonderful benefit, retirees need to realize that the PERA cannot invest its way out of the solvency problem. Everyone, including retirees, needs to contribute to fix the solvency issue. He advised that the politicizing of the PERA fund needs to stop.

Dr. Terry Greer, retired teacher, said that teachers do not make anywhere near 90% of their salaries in retirement, which is an important distinction between the PERA and the ERB.

Leandro Cordova, New Mexico Counties, said that regarding the governor's task force recommendations, he opposes the contribution increases, which he said would cost too much for counties and employees. He does support the COLA proposals and eliminating the salary cap.

Overview of Quasi-Governmental Agency Retirement Plans

John Gasparich, interim chief executive officer, New Mexico Finance Authority (NMFA), Dan Opperman, general counsel, NMFA, and Bryan Otero, assistant general counsel, NMFA, presented an overview of the NMFA's employee retirement plan. Mr. Gasparich began by providing a history of the NMFA and noting that the NMFA has 41 full-time employees, 20 of whom are fully vested. Mr. Opperman continued, stating that the NMFA's plan began in 1995 and that it is a 401(a) defined contribution plan, as opposed to the defined benefit plans offered by the PERA and the ERB. The 401(a) plan is similar to a 401(k) plan, but it is available for public and nonprofit organization employees. NMFA employees are allowed to participate in the plan upon hiring; there is a mandatory 3% pre-tax employee contribution, and the NMFA has a 15% matching contribution. Employees can voluntarily contribute up to 4% post-tax, with the NMFA matching 50% of this (up to 2%), he said. Employer contributions are fully vested after five years, and matching contributions are fully vested after two years. According to Mr. Opperman, the maximum allowable contribution in 2019 is $56,000, and forfeitures of non-vested money are used to fund employer contributions. Loans are permitted under the plan, with a minimum of $500, and must be repaid within five years. Distributions to members can be either a single lump-sum payment or payments over a certain period, and beneficiaries receive distributions after a member's death.

Questions and comments from committee members addressed the following:

- an advantage of a defined contribution plan is that there is never any concern about the plan being underfunded in the future;
- the NMFA works with two financial advisors who explain what investment options are available to new employees upon signing up for the retirement plan; there is no requirement on where and how money is invested, so the employee takes the risk on investments;
- the NMFA's retirement plan does not have certain constitutional implications that the PERA and the ERB plans have; and
- of the quasi-governmental entities in state government, the MFA has a similar plan to the NMFA's, although the MFA's plan is a 401(k); other authorities, such as the Public School Insurance Authority, do not participate in defined contribution plans.

Adjournment

There being no further business, the third meeting of the Investments and Pensions Oversight Committee adjourned at 3:11 p.m.