



NEW MEXICO LEGISLATURE

**INVESTMENTS AND  
PENSIONS OVERSIGHT  
COMMITTEE**

2016 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE  
411 STATE CAPITOL  
SANTA FE, NEW MEXICO 87501  
(505) 986-4600  
[WWW.NMLEGIS.GOV](http://WWW.NMLEGIS.GOV)

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## INTERIM SUMMARY



## **Investments and Pensions Oversight Committee 2016 Interim Summary**

The Investments and Pensions Oversight Committee met five times during the 2016 interim. The committee heard updates from several of the state's investing agencies, including the Public Employees Retirement Association, the Educational Retirement Board and the State Investment Council. Reports from those agencies focused largely on trust fund health, transparency in reporting and efforts to improve governance. Representatives of the Retiree Health Care Authority and the Education Trust Board also presented updates on activity at their respective agencies.

The committee explored the topic of financial insecurity in private-sector retirement, an increasingly prevalent concern for states. Spokespersons from a wide range of national organizations testified to the committee on the scale and nature of the problem and highlighted that, among states, the concern is particularly acute in New Mexico. The testimony outlined actions that other states are taking to address financial insecurity in retirement. It also laid out measures that New Mexico could pursue to help a segment of its population save for retirement.

The committee heard presentations on: 1) efforts to modernize and improve participation in the Public Employees Retirement Association's Deferred Compensation Program; 2) the status of legal claims involving the State Investment Council; 3) the economic effects of state pension benefit payments; 4) state pension agencies' compliance with recent Governmental Accounting Standards Board statements; and 5) the State Investment Council's efforts to stimulate economic development in New Mexico through the council's in-state private equity investment program and its newly launched New Mexico Catalyst Fund, which is designed to capitalize early-stage businesses in the state.

Toward the end of the interim, the committee endorsed legislation to:

- exempt certain Educational Retirement Board employees from the Personnel Act;
- require additional financial reporting by investment agencies;
- require separate payment by agencies for benefits accumulated under multiple systems;
- amend the Educational Retirement Act;
- amend the Deferred Compensation Act; and
- provide for municipal post-employment life insurance benefits trusts.





## WORK PLAN AND MEETING SCHEDULE



**2016 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 May 9, 2016. Committee members are as follows:

**Members**

Sen. George K. Munoz, Chair	Sen. Steven P. Neville
Rep. Monica Youngblood, Vice Chair	Sen. Bill B. O'Neill
Sen. Sue Wilson Beffort	Rep. Jane E. Powdrell-Culbert
Sen. Jacob R. Candelaria	Rep. William "Bill" R. Rehm
Rep. Miguel P. Garcia	Sen. William P. Soules
Rep. Larry A. Larrañaga	Rep. Jim R. Trujillo
Sen. Carroll H. Leavell	Rep. Luciano "Lucky" Varela

**Advisory Members**

Sen. Ted Barela	Sen. William H. Payne
Sen. Carlos R. Cisneros	Sen. John C. Ryan
Rep. Roberto "Bobby" J. Gonzales	Rep. Tomás E. Salazar
Sen. Stuart Ingle	Sen. Michael S. Sanchez
Rep. Patricia A. Lundstrom	Rep. James E. Smith
Sen. Mary Kay Papen	Rep. Sheryl Williams Stapleton

**Work Plan**

During the 2016 interim, the IPOC will:

- (1) receive from the Public Employees Retirement Association (PERA), the Educational Retirement Board (ERB) and the Retiree Health Care Authority (RHCA) reports on each agency's maintenance of sustainability and solvency, as demonstrated by:
  - ▶ actuarial valuation reports, including details of unfunded liabilities, other actuarial metrics and experience studies;
  - ▶ funding policies; and
  - ▶ plans for addressing any impediments to sustainability and solvency;
  
- (2) receive from the State Investment Council (SIC), the PERA, the ERB, the RHCA and the Education Trust Board (ETB) reports on each agency's maintenance of transparency, as demonstrated by:
  - ▶ policies and controls, including:
    - asset allocation policies and implementation of such policies;
    - investment committee policies;
    - financial reports, investment performance reports and, if applicable, actuarial reports; and
    - investment manager and consultant selection processes and required disclosures;

- ▶ investment management and consulting expenses, including base performance and incentive fees and costs, whether expensed or capitalized, on-budget or off-budget; custodial fees; investment transaction fees; commissions; and any other investment-related expenses; and
- ▶ audited financial statements and board and committee meeting minutes posted on each agency's website;

(3) receive from the SIC, the PERA, the ERB, the RHCA and the ETB reports on each agency's value, as demonstrated by:

- ▶ economic impact; and
- ▶ comparison to peers;

(4) receive from the SIC, the PERA, the ERB, the RHCA and the ETB reports on each agency's strategic goals, as demonstrated by:

- ▶ plans and actions; and
- ▶ troubleshooting any impediments to meeting goals;

(5) receive reports from the PERA, the ERB, the Department of Finance and Administration and the state auditor regarding the effects of Governmental Accounting Standards Board Statements 67 and 68 on governmental entities;

(6) receive reports from the SIC on its investment of the Severance Tax Permanent Fund in New Mexico private equity funds or New Mexico businesses whose investments or enterprises contribute to the economic development of the state;

(7) receive testimony from the PERA about public employee participation in its 457 plan and from experts about private-sector employee participation in state-managed retirement plans;

(8) receive reports on proposed legislation, including changes to the Public Employees Retirement Act that would establish certain return-to-work measures; and

(9) examine other issues related to the investment of public funds and the administration of pension benefits, as necessary.

**Investments and Pensions Oversight Committee  
2016 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
May 19	Santa Fe
July 7	Santa Fe
August 29	Santa Fe
October 31	Santa Fe
November 29	Santa Fe



# AGENDAS AND MINUTES





**TENTATIVE AGENDA  
for the  
FIRST MEETING IN 2016  
of the  
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**May 19, 2016  
Room 322, State Capitol  
Santa Fe, New Mexico**

**Thursday, May 19**

- 10:00 a.m.           **Call to Order**  
—Senator George K. Munoz, Chair  
—Representative Monica Youngblood, Vice Chair
- 10:05 a.m.       (1)   **[Update from the Public Employees Retirement Association \(PERA\)](#)**  
—Susan Pittard, Chief of Staff, PERA  
—Greg Trujillo, Deputy Executive Director, PERA
- 10:45 a.m.       (2)   **[Update from the State Investment Council \(SIC\)](#)**  
—Steven K. Moise, State Investment Officer, SIC  
—Vince Smith, Deputy State Investment Officer, SIC
- 11:15 a.m.       (3)   **[Update from the Education Trust Board \(ETB\)](#)**  
—Theodore Miller, Executive Director, ETB
- 11:45 a.m.       (4)   **[2016 Interim Work Plan and Meeting Schedule](#)**  
—Lisa Sullivan, Staff Attorney, Legislative Council Service
- 12:15 p.m.           **Adjourn**



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

**May 19, 2016  
Room 322, State Capitol  
Santa Fe**

The first meeting of the Investments and Pensions Oversight Committee was called to order by Representative Monica Youngblood, vice chair, on May 19, 2016 at 10:10 a.m. in Room 322 of the State Capitol.

**Present**

Rep. Monica Youngblood, Vice Chair  
Rep. Miguel P. Garcia  
Rep. Larry A. Larrañaga  
Sen. Bill B. O'Neill  
Rep. William "Bill" R. Rehm  
Sen. William P. Soules  
Rep. Jim R. Trujillo  
Rep. Luciano "Lucky" Varela

**Absent**

Sen. George K. Munoz, Chair  
Sen. Sue Wilson Beffort  
Sen. Jacob R. Candelaria  
Sen. Carroll H. Leavell  
Sen. Steven P. Neville  
Rep. Jane E. Powdrell-Culbert

**Advisory Members**

Sen. Ted Barela  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Stuart Ingle  
Rep. Tomás E. Salazar  
Rep. James E. Smith

Sen. Carlos R. Cisneros  
Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papen  
Sen. William H. Payne  
Sen. John C. Ryan  
Sen. Michael S. Sanchez  
Rep. Sheryl Williams Stapleton

**Staff**

Lisa Sullivan, Staff Attorney, Legislative Council Service (LCS)  
Diego Jimenez, Research Assistant, LCS  
Tessa Ryan, Staff Attorney, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Thursday, May 19**

**Update from the Public Employees Retirement Association (PERA)**

Susan Pittard, chief of staff, PERA, conveyed the regrets of Wayne Propst, the executive director of PERA, for his absence at the meeting. She then introduced several PERA staff members who were in the audience, including Natalie Cordova, chief financial officer, PERA, and Jude Perez, deputy chief investment officer, PERA. Greg Trujillo, deputy executive director, PERA, joined Ms. Pittard in updating the committee on key PERA-related information and figures, as follows.

***Employees served by the PERA.*** The PERA administers pension plans for nearly 50,000 members categorized as state and municipal employees. It also administers a host of smaller plans that include the "Smart Save" deferred compensation plan and plans for volunteer firefighters, legislators and judges.

***Membership and retirements.*** In April 2016, active members numbered 48,439. In the period from May 2015 to April 2016, the number of retired members rose marginally but steadily to a peak of 38,157. Across all PERA-administered plans, there have so far been 1,809 retirements in fiscal year (FY) 2016. Statutory changes to cost-of-living-related payment adjustments are not prompting a noticeable spike in retirements.

***Recent benefit payments.*** For FY 2015, the PERA paid about \$1.021 billion in benefits. Of that amount, about \$900 million was paid to retirees in New Mexico; about \$75 million was paid to retirees outside New Mexico; and about \$46 million was paid to non-retiree members who withdrew their contributions upon terminating employment.

***Net pension liability; reporting.*** The PERA's public employee plans' net pension liability increased almost \$1 billion from FY 2014 to FY 2015. In response to the recent implementation of new Governmental Accounting Standards Board (GASB) statements, the PERA plans to inform each of its participant employers of the employer's allocation of total net pension liability.

***PERA accomplishments.*** In FY 2015, in an effort to improve its services, the PERA contracted with a third party to conduct an internal audit. The PERA has followed through on several of that contractor's recommendations, and the agency plans action on the remaining recommendations. The PERA has also: 1) reduced its FY 2017 operating budget; 2) secured an FY 2017 appropriation for enhancements to the retirement information online system; 3) transitioned seamlessly to a new custody bank; 4) updated its branding and website; 5) made it clearer to the public that the PERA administers the deferred compensation plan; and 6) improved its member services. Adding to those achievements, the PERA received an unmodified opinion with no findings for its FY 2015 financial audit.

***Strategic asset allocation; fund performance.*** Redesigning asset allocations with risk reduction in mind, the PERA established new distribution targets for its investments in each of

four categories. The proportion of assets invested in "global equity" and "risk reduction/mitigation" will decrease, and the proportion in "credit oriented" and "real assets" will increase.

On March 31, 2016, the PERA fund totaled \$14 billion, and the deferred compensation plan balance was \$494 million. Since the start of the fiscal year, the fund's return, net of fees, was -1.33%. The PERA expects the new strategic asset allocation to improve returns.

### Questions and Discussion

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

***Internal audit.*** Ms. Pittard explained that the internal audit is a management tool for identifying the agency's internal, systemic weaknesses. Mr. Trujillo added that, as part of the audit process, the external auditor reviews the findings of the internal audit and ensures that the agency is following through on the recommendations made in the internal audit.

***PERA's custody bank.*** Ms. Pittard said that before BNY Mellon, the PERA used J.P. Morgan as its custody bank. The PERA has found that BNY Mellon customizes its services to meet the state's needs and that using it saves the agency money. Mr. Trujillo added that the new custody bank's reporting to the PERA allows better monitoring of its portfolio and risk exposure. He said that only a small number of banks in the nation would be capable of handling the amount of money that the PERA manages, and none of them is a local bank.

***Stresses on system caused by disparity between contributions and payments.*** Remarking on the ratio of active members to retirees, several members expressed concern about the strain on the system caused by the increasing longevity of retirees. Mr. Trujillo said that the PERA's actuaries study mortality figures and adjust assumptions accordingly. He acknowledged that baby boomers put strain on the system, but he also asserted that recent legislative changes to the Public Employees Retirement Act and the growing emergence of millennials will help temper that strain.

***PERA investments; investment returns.*** Mr. Perez elaborated as follows on the reasons that the current financial environment can be characterized as "muted". Twenty years ago, U.S. bonds yielded returns of about 6% to 8%. Today, returns on those investments are closer to 1.75%. From a global economic standpoint, there is no catalyst for major growth. Mr. Perez added that it is not known when return rates will begin to rebound.

In response to a member's suggestion that the PERA, like many private retirement savings plans, silo assets for investment according to members' nearness to retirement and choose investments with corresponding risk levels, Ms. Pittard stated that the PERA pools the assets. The Public Employees Retirement Board monitors the market environment and uses that information to decide on strategic asset allocations, she said. She added that the pooled assets are divided and invested at a range of risk levels; some investments temper risk, and others drive returns. The need for liquidity, she said, directs that approach. Mr. Perez elaborated by saying

that risk-mitigating investments constitute much of the PERA's investment portfolio, but the proportion of those investments can change if financial markets improve; furthermore, the PERA's requirement to provide defined benefits, as distinguished from defined contribution plans, supports the PERA's approach.

***Smart Save deferred compensation plan.*** Ms. Pittard elaborated on the deferred compensation plan, including by noting that: 1) the PERA's efforts at improving its branding extend to the deferred compensation program; 2) the agency is trying also to improve awareness of the program; 3) the PERA contracts with a third party, Nationwide Retirement Solutions, to administer the plan and has an advisor dedicated to making investment recommendations; and 4) participants select from asset allocation options, which range from aggressive to conservative. Karyn Lujan, PERA Smart Save plan manager, who was in the audience, added the following remarks about the plan: 1) most enrollees are between the ages of about 30 and 50; 2) interest among those eligible to participate tends to increase after their PERA vesting; 3) the agency is boosting its advertising to younger eligible participants; 4) some investment options are designed to perform based on the timing of projected withdrawals; and 5) Nationwide has four representatives in the state who can educate prospective or active participants on fund strategies and projected outcomes, but, ultimately, investment decisions are left to participants.

Ms. Lujan summarized some features of the plan: severance from employment is generally a prerequisite to withdrawal; a participant might qualify for withdrawal if the participant experiences an unforeseen emergency; distributions are taxable as ordinary income but are not subject to the 10% penalty imposed on other types of retirement-savings withdrawals under federal law; and some plans include a loan option; those loans range in amount from \$1,000 to 50% of the account balance, up to \$50,000.

A member requested that the committee add the topic of the deferred compensation program to the committee's proposed work plan.

***Retirements; refunded member contributions.*** Ms. Pittard stated that, for purposes of service credits and benefit payments, the PERA and the Educational Retirement Board have a reciprocal relationship. Mr. Trujillo stated that June is a peak month for retirements and that the number of retirements in the past year is about the same as or lower than in the previous year, when recently enacted legislation would have had a more pronounced effect. Mr. Trujillo also said that when members withdraw their contributions before retirement, it is usually the case that their need for that money is dire.

***New GASB standards.*** Ms. Cordova clarified that: 1) though the PERA is not required to inform participant employers of their net pension liability, it does so because it is helpful to those entities; and 2) while the net pension liability calculation introduces volatility to the measurement of a government's long-term obligations associated with its pension benefit provision, over time, reporting under the new GASB standards will improve the assessment of a pension fund's health.

**Other comments.** In response to a member's question of whether the PERA has ever considered giving members the option of wholesale, one-time payments upon retirement, Ms. Pittard replied that the Public Employees Retirement Act is set out as a defined-benefit, 401(a) plan and that the board is committed to maintaining that structure. Another member remarked on the benefit to the economy and to governments, in the form of taxes, of the retirement payments, which annually exceed \$1 billion, disseminated throughout the state.

**Requests for more information.** Members requested of the presenters more information on: 1) the characteristics of the deferred compensation program's participants, including data showing the ages of enrollees; 2) terms of the contract that PERA entered into with Nationwide Retirement Solutions; 3) the projected and actual ages of death of primary beneficiaries for each of the pension plans and the projected ages of death of secondary beneficiaries; 4) the economic effects of pension payments, as shown by the ratio of those payments in each county to the county's gross domestic product; and 5) the number of retirements in recent periods.

#### **Update from the State Investment Council (SIC)**

Steven K. Moise, state investment officer, SIC, Vince Smith, deputy state investment officer, SIC, and Charles Wollmann, director of communications and legislative affairs, SIC, updated the committee as follows on the status of SIC-managed assets. Mr. Moise expressed gratitude to the committee for its help in passing several bills designed to improve SIC-managed funds' health.

**Assets, investments and investment performance.** SIC-managed assets, which include money in the Land Grant, Severance Tax, Tobacco Settlement and Water Trust permanent funds and governmental clients' assets, totaled \$20.17 billion on April 30. That figure represents a nominal increase from the beginning of the first quarter, a period characterized by volatility but a relatively insignificant overall change in fund value. As of April 30, 44.4% of SIC-managed assets are invested in public equities, 31.9% in private markets and 23.4% in fixed income investments. The percentage returns on investments of assets in the permanent funds, as seen over several historical ranges, have fallen short of the SIC's target. Slack in oil and gas extraction revenues is compounding the problem of weak returns.

**Fund inflows and distributions.** Increasingly, inflow amounts to the Land Grant and Severance Tax permanent funds are weak in comparison to the amounts of distributions made from those funds. For the month of April, distributions from those funds exceeded inflows by \$45.6 million. If the trend of depressed inflows continues, the amounts of distributions from those funds will decrease.

Largely because of a statutory change to the rate used in calculating distributions from the Land Grant and Severance Tax permanent funds (from 5.5% to 5%), the SIC projects a \$10.8 million decrease in year-over-year distributions from those funds for FY 2017. Meanwhile, it forecasts FY 2018 distributions of \$51.8 million more than FY 2017 distributions.

**Investment outlook.** The SIC expects low return rates in the next seven to 10 years; the outlook for the macroeconomic environment and the financial market is dim. In that time, the SIC projects that rates of return will range from about 6.5% to 7%. The SIC's peers, too, are lowering their return targets.

Meanwhile, stocks and bonds, two traditionally productive investment vehicles, have simultaneously become relatively expensive. To contend with that circumstance, the SIC began in 2011 to pursue a reduction in exposure to those investments. Like many of its peers, the SIC is gradually shifting away from stock and bond investments and — within certain risk parameters — shifting its assets toward investments, such as real estate, that it believes will yield higher returns. It is also building its protection against downside risks and positioning itself to fare well in the face of rising interest rates and inflation.

**New Mexico investments.** The SIC recently approved the release of \$10 million to invest in New Mexico-based start-up companies. The money will be deposited into a fund, the "New Mexico Catalyst Fund, LP", managed by Sun Mountain Capital, LLC. The U.S. Treasury has helped capitalize the fund with approximately \$5 million.

#### Questions and Discussion

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

**Investment strategy; federal interest rate.** Responding to members' questions, Mr. Smith indicated that: 1) the SIC designed its investment strategy with an eye to a possible rise in federal interest rates, which would improve stock and bond yields, though it is not known when any interest rate change will occur; 2) the strategy also reflects the trend of worsening bond performance; 3) the Federal Reserve is struggling to overcome the scarcity of tools at its disposal to fight the recession; 4) the economy is strengthening, but it is not strong; 5) the SIC has recently increased its investments in real estate, real assets (e.g., timber) and infrastructure (e.g., power companies, power distribution, shipping and airports) because it expects them to generate income; 6) increasingly, the number of stocks attractive to invest in has dwindled; and 7) the SIC is moving away from cap-weighted indices and toward a more diverse portfolio. A member commented that the SIC should be careful in shifting its investment strategy just because of uncertainty in the new investments' performance but also acknowledged that economic conditions have generally put an end to investments that hold more promise.

**Changes to the Land Grant Permanent Fund distribution rate.** Mr. Wollmann indicated that if voters approved an increase in the Land Grant Permanent Fund distribution rate, the timing of the first higher-rate distribution would depend on factors that include the legislation's provisions and the possible requirement for congressional approval of the change.

**Projected distributions.** Commenting on the SIC's projections of future distributions from the Land Grant and Severance Tax permanent funds, Mr. Wollmann said that many factors,



including increased distributions or decreased inflows, could dramatically change the reported figures. Mr. Moise added that the projections are unlikely if the distribution rate exceeds 5%.

**Governmental clients.** Mr. Wollmann elaborated on the SIC's governmental clients and their relationship with the SIC. Only certain such investors qualify for and are suited to take advantage of the SIC's services. The SIC's governmental clients include universities, cities, counties, agencies and school districts. To become a client, the SIC and the entity enter into a joint powers agreement approved by the Department of Finance and Administration. The agreement provides for low fees; a given rate is based on the size of the client's permanent fund. Since the SIC has no budget to advertise its services, clients generally learn of the services by word of mouth.

**New Mexico Catalyst Fund.** A member stressed the importance of venture capital investments to economic growth in light of reports predicting that a majority of the jobs of the future do not exist today.

Mr. Moise elaborated as follows on the New Mexico Catalyst Fund. It includes money, available from the U.S. Treasury's State Small Business Credit Initiative, that was very likely to otherwise remain unused before the spending deadline. The Economic Development Department, the New Mexico Finance Authority and the governor proposed to the SIC that it create a program to use and leverage the money in the fund for economic development. The SIC agreed and voted to invest \$10 million. The fund administrator, Sun Mountain Capital, which is based in Santa Fe, will soon solicit applications for access to the fund assets. Mr. Moise suggested that, though the investment is high risk and might yield losses before it yields gains, ultimately, the fund's performance would satisfy high expectations.

Mr. Wollmann added some related comments. He said that: 1) the fund's structure is unique because it aligns federal, state and private interests; 2) while it may appear that New Mexico's second-stage investing is adequate, this program will help fill a deficiency in early-stage investments; and 3) the SIC hopes that the fund is self-perpetuating. A member praised the fact that the pursuit's risk is spread among several entities.

#### **Update from the Education Trust Board (ETB)**

Theodore Miller, executive director, ETB, presented to the committee on the ETB's mission, goals and 529 program as follows. He prefaced his presentation by stressing that, unlike other state-created entities, the ETB operates like a business and relies exclusively for its funding on fees for service.

**Overview of the ETB.** The board's mission is to help students get a post-secondary education, including at four-year colleges, trade schools and junior colleges, by administering the 529 college savings program. With an eye to the importance of improving the lives of New Mexico children, other residents and the New Mexico economy, the board strives to enable as many New Mexico children as possible to become beneficiaries of 529 college savings accounts

before they reach age 10. The board has identified as its goals: 1) consistent year-over-year growth in the number of account owners; and 2) recognition as one of the top-15 529 college saving programs in the nation. It is now ranked as number 25.

***Board governance and oversight.*** The ETB is governed by a five-person board, has only two paid employees on staff — Mr. Miller and a financial coordinator — and uses a host of consultants for its industry/investment and operations needs. As part of the board's oversight process, the board's investment consultant and industry consultant report to the board, and the board and the investment consultant conduct site visits of the organization's program manager, Oppenheimer Funds, to review its operations, investment management and risk management. A recent site visit in New York left the reviewers with positive overall impressions.

***New Mexico 529 program.*** The 529 program consists of two plan options: the Education Plan and the Scholar's Edge. The Education Plan is sold directly to participants, has 20,858 accounts, has an average Morningstar rating of 3.7 stars and offers investment options whose risk levels are either based on age or are static. Within those investment options, plan participants may choose from an index or blended portfolio. Meanwhile, the Scholar's Edge plan is sold indirectly through commission-based investment advisors, has 117,467 accounts, has an average Morningstar rating of 3.5 stars and offers investment options whose level of risk is either based on age, is static or conforms to individual preference. Each program offers three risk-based track levels.

On March 31, both plans' assets totaled about \$2.257 billion. The figure represents a slight drop from the June 30, 2015 total. Assets in the Education Plan constitute approximately 21% of the March 31 balance, and assets in the Scholar's Edge plan constitute about 79% of it. The \$355.6 million in assets held in New Mexico on March 31, which equals 15.8% of the total, represents a slight decrease from that figure as recorded on June 30, 2015.

***Program marketing and improvement.*** The ETB has ramped up its marketing efforts and its efforts at improving the public's ease in understanding and applying to its programs. These efforts include advertising in local publications, strengthening the ETB's presence on social media, improving the ETB's website usability and allowing for pauses in online application form completion. Moreover, the ETB will increase its financial investment in marketing, introduce new advertising messages, pilot a matching-grant program, reach out more to employers and continue its distribution of promotional materials. To further boost the ETB's visibility, ETB representatives promoted its college savings programs at the National Honor Society-National Junior Honor Society state summit held in April at the University of New Mexico's main campus.

***Program performance.*** Overall, the ETB's programs and investments have been performing well.

## Questions and Discussion

On questioning, the committee and Mr. Miller addressed the following topics.

***Program assets.*** Mr. Miller explained that the figures marked as assets on page 15 of the handout associated with his presentation represent the sum of all program assets held in trust, money in all accounts and investment gains.

***Litigation.*** Mr. Miller noted that the lawsuit related to alleged mismanagement of the New Mexico college savings plans has been resolved.

***College savings plan and student debt.*** Mr. Miller indicated that, though information on the relationship between college savings plans and student debt is scarce, recent reports suggest that debt is not as high as it used to be. Research further suggests that children of families that save for their educations are more likely to graduate from college, he said. A member expressed an interest in hearing more on the relationship between college savings programs and debt, and the member encouraged Mr. Miller to explore the topic.

### **2016 Interim Work Plan and Meeting Schedule**

Ms. Sullivan presented the committee's 2016 proposed work plan and meeting schedule. In response to suggestions made during the meeting, she proposed two additions to the proposed work plan: 1) to Item (7), a provision that the committee receive testimony from experts about public employee participation in 457 deferred compensation plans; and 2) to Item (8), a provision that the committee receive reports on proposed legislation concerning changes to the Public Employees Retirement Act that would establish certain return-to-work measures.

A member suggested that the committee also consider a piece of legislation, which it endorsed in the 2015 interim, that would allow a municipality to establish a post-employment life insurance benefits trust. Ms. Sullivan noted that the current wording of the work plan encompassed the topic and that the committee could hear the item with the chair's approval.

With no opposition, the committee adopted the work plan and meeting schedule.

### **Adjournment**

There being no further business before the committee, the committee adjourned at 1:20 p.m.



Revised: July 1, 2016

**TENTATIVE AGENDA  
for the  
SECOND MEETING IN 2016  
of the  
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**July 7, 2016  
Room 322, State Capitol  
Santa Fe**

**Thursday, July 7**

- 9:00 a.m.           **Call to Order**  
—Senator George K. Munoz, Chair  
—Representative Monica Youngblood, Vice Chair
- 9:05 a.m.       (1)   **Update from the Educational Retirement Board (ERB)**  
—Jan Goodwin, Executive Director, ERB  
—Rick Scroggins, Deputy Director, ERB
- 10:15 a.m.       (2)   **Report on the ERB's Efforts to Enhance Transparency and to Improve Governance Structures**  
—Bob Jacksha, Chief Investment Officer, ERB
- 12:00 noon           **Approval of Minutes**
- 12:05 p.m.           **Lunch on Your Own**
- 1:15 p.m.       (3)   **Report on the Deferred Compensation Plan Administered by the Public Employees Retirement Association (PERA)**  
—Wayne Propst, Executive Director, PERA  
—Jon Gabel, Chief Investment Officer, PERA  
—Karyn Lujan, Deferred Compensation Plan Manager, PERA
- 2:00 p.m.       (4)   **Report on the PERA's Efforts to Enhance Transparency and to Improve Governance Structures**  
—Wayne Propst, Executive Director, PERA  
—Jon Gabel, Chief Investment Officer, PERA
- 3:15 p.m.       (5)   **Report on the State Investment Council's (SIC's) Efforts to Enhance Transparency and to Improve Governance Structures**  
—Steve Moise, State Investment Officer  
—Vince Smith, Deputy State Investment Officer

5:00 p.m. (6) [Update by the SIC on Private Equity Investments in Businesses in the State and an Early Stage Seed Venture Funding Program](#)  
—Steve Moise, State Investment Officer  
—Vince Smith, Deputy State Investment Officer

5:45 p.m. **Adjourn**

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

**July 7, 2016  
Room 322, State Capitol  
Santa Fe**

The second meeting of the Investments and Pensions Oversight Committee (IPOC) was called to order by Senator George K. Munoz, chair, on July 7, 2016 at 9:15 a.m. in Room 322 of the State Capitol.

**Present**

Sen. George K. Munoz, Chair  
Rep. Monica Youngblood, Vice Chair  
Sen. Jacob R. Candelaria  
Rep. Larry A. Larrañaga  
Sen. Steven P. Neville  
Rep. Jane E. Powdrell-Culbert  
Rep. Jim R. Trujillo  
Rep. Luciano "Lucky" Varela

**Absent**

Sen. Sue Wilson Beffort  
Rep. Miguel P. Garcia  
Sen. Carroll H. Leavell  
Sen. Bill B. O'Neill  
Rep. William "Bill" R. Rehm  
Sen. William P. Soules

**Advisory Members**

Sen. Ted Barela  
Sen. Carlos R. Cisneros  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Stuart Ingle  
Sen. John C. Ryan  
Rep. Tomás E. Salazar  
Rep. James E. Smith

Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papen  
Sen. William H. Payne  
Sen. Michael S. Sanchez  
Rep. Sheryl Williams Stapleton

**Staff**

Lisa Sullivan, Staff Attorney, Legislative Council Service (LCS)  
Diego Jimenez, Research Assistant, LCS  
Tessa Ryan, Staff Attorney, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

Thursday, July 7

**Update from the Educational Retirement Board (ERB)**

Jan Goodwin, executive director, ERB, introduced several members of the ERB staff who were in the audience. Ms. Goodwin and Bob Jacksha, chief investment officer (CIO), ERB, presented an update on the ERB, its membership and its investment performance as follows.

*Active members, retirees, benefit payments and contributions.* Over the period from fiscal year (FY) 2001 through FY 2015, the number of active members, who are personnel serving students in pre-kindergarten through twelfth grade and students in the higher education systems, remained fairly constant at around 61,000. Meanwhile, the number of retirees has steadily increased over that period. In each fiscal year since FY 2001, the amount in benefit payments has exceeded the sum of employee and employer contributions. That imbalance is characteristic of mature pension plans.

*Historic and future retirements.* The number of retirements in the last nine fiscal years is consistent with national trends, including the "silver tsunami". An apparent spike in retirements in FY 2013, as shown on page five of the presentation handout, actually reflects a change in methodology used by ERB actuaries. Those actuaries, who consider factors such as employer type and employee tier, project that retirements will gradually decrease between FY 2016 and FY 2025. A map on page eight of the handout shows the distribution by county of the more than \$775 million in benefits paid to retirees in 2015. Those payments directly and indirectly benefit the state's economy.

*Investment performance and assets through March 2016.* For the year ending March 31, 2016, investments yielded a return of almost \$45 million, or .4%, net of investment management fees. That number falls short of the 7.75% actuarial target. When measured for periods going back fewer than 30 years, almost all returns have fallen short of the target. Nevertheless, actual returns have exceeded the policy index targets in all periods measured, and the 30-year return average of 9.2%, gross of fees, has ranked the ERB first among its peers. Charts on pages 16 and 17 of the handout show, for the periods of one, three, five and 10 years before March 31, 2016, the ERB's total-fund's and other portfolios' performance, gross of fees, as measured by risk taken and return yield.

On March 31, 2016, ERB-managed assets equaled \$11.1 billion. Overall, total assets have increased over the eight-year period before then.

*May 2016 investment update.* In April, investments yielded a 1.2% rate of return. For May, the figure was .3%. At the end of May, assets equaled \$11.3 billion, and the fiscal-year-to-date return was 1.5%. The ERB expects that the measures for June will be comparable.

*Key consultants and service providers.* Some of the ERB's consultants and service providers, who perform a variety of actuarial, legal, financial, information technology and other



services, and who are selected through competitive processes, have had long professional relationships with the ERB.

### Questions and Discussion

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

***Proportion of active members to retirees; fund solvency.*** Several members expressed concerns that: 1) over time, the number of active members has remained relatively constant, while the number of retirees has increased; 2) often, in a given year, more money has been paid out of the fund than drawn into it; and 3) because of these trends, the fund's corpus will erode. In response, Ms. Goodwin: 1) pointed out the difference between the ERB and a "pay-as-you-go" retirement program like social security: the ERB has a trust fund of over \$11 billion, while others do not; 2) noted that, in some years, investment returns have filled the gap between payments and contributions; 3) said that actuaries who study the fund are cognizant of the matter; and 4) noted that the state's economy is relatively stagnant, which explains why there are not more schools and teachers to drive up the number of active members. Mr. Jacksha remarked that the ERB, to meet its obligations, was designed to rely on active members' contributions in the program's early stages and, after that, to rely increasingly on investment income.

***Retirement trends.*** Ms. Goodwin indicated that members' average retirement age has risen, partly because of recent changes to the eligibility rules. She summarized those rules for each of the classification tiers. She also stated that, even though there are increasingly fewer payers in the system, the fund will remain solvent for the foreseeable future.

***Economic effects of benefit payments.*** A member underscored the economic importance to counties of the benefit payments made to retirees residing in those counties and the loss of economic potential corresponding to payments made outside the state.

### **Report on the ERB's Efforts to Enhance Transparency and to Improve Governance Structures**

Ms. Goodwin prefaced the presentation by stressing that government employees serve in positions of trust. That trust is especially important in the case of those who help manage a high-value pension system, like the ERB does, she said. Then she and Mr. Jacksha outlined, as follows, some practices of the ERB for publicizing agency-related information and for ensuring effective governance.

***Transparency.*** On its website, the ERB publishes program participation information and a variety of current and historic information concerning the pension fund's status and investments; the agency's policies and operations; and board meetings and policies. In particular, within these categories are: 1) quarterly performance reports, which include both general information and detailed information on investments, such as allocations, managers and performance metrics, and which include placement agent disclosures; 2) investment policies focused on such topics as: the selection process for service providers; roles and responsibilities

of key individuals and entities; management of the internal core bonds portfolio; and risk controls; and 3) annual actuarial and financial reports. In June, the board formalized these publication practices by adopting a transparency policy, copies of which were distributed to the committee.

The ERB has researched and resolved to adopt financial reporting best practices by similar public pension systems. Accordingly, the agency is striving to follow a set of recommendations issued recently by The Pew Charitable Trusts to improve transparency. Among other measures, the ERB will adopt comprehensive fee reporting standards and increase public disclosure of investment policies. Examples of the ERB's current financial reporting and disclosures are on pages 13 and 14 of the presentation handout. Sample sheets containing the types of information the ERB wishes to incorporate in its reporting are on pages 15 through 18 of the handout. Future statements of changes in fiduciary net position will, as in the example on page 15, include amounts of contributions by members and employers and include more detail about investment expenses. The ERB will also issue schedules to spotlight internal investment activity expenses for the portion of the fund managed by ERB staff, and it will issue schedules of administrative expenses and schedules of professional/consultant fees.

To further improve its transparency, the ERB participates as a member of the Institutional Limited Partners Association and has endorsed the organization's fee transparency initiative.

**Governance.** The ERB's trustees oversee and help carry out some of the agency's responsibilities. They are charged with hearing agency reports, reviewing certain agency policies, establishing certain agency practices and hiring certain agency staff. The board complies with the Open Meetings Act in holding regularly scheduled and as-needed meetings. Meanwhile, committees of the board are charged with overseeing investments, audits and the alternative retirement plan.

The ERB is learning about and considering for adoption other state pension fund programs' models of governance.

#### Questions and Discussion

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

**Board retreat; Arizona's pension-governance system.** Mr. Jacksha explained that the choice to hear from the executive director of Arizona's public pension system at the board's retreat was influenced by his and a board member's having heard the executive director speak at a conference and by the board's desire to learn about Arizona's model.

**Investment-related governance.** Mr. Jacksha reported that the investment committee meets monthly for about three to four hours at a time and that the committee: hires the ERB's private equity managers; approves other types of investment services contracts; reviews investment reports and performance; and decides on policy changes.

**Policy on investment risk.** Mr. Jacksha indicated that: 1) the fund's portfolio is relatively conservative; 2) managers focus on how the portfolio's pieces interact; 3) managers evaluate asset allocation every two years and make changes accordingly; and 4) managers generally do not drastically change the portfolio. In response to a member's suggestion that a law be enacted to limit the degree of risk-taking managers engage in and ensure conservatism in investing, Mr. Jacksha said that managers are currently governed by the board, the prudent investor rule and standards for institutional investors. The member expressed a preference for conservative investments that yield slow but steady financial growth.

**Status of litigation; possibility of legal action.** Roderick Ventura, general counsel, ERB, who was in the audience, summarized the status of litigation affecting the ERB, and he characterized that activity as relatively quiet. He reported that, because the litigation involved agency settlements, the attorney general had moved to take over as the plaintiff in a *qui tam* suit filed under the Fraud Against Taxpayers Act (FATA) by an individual plaintiff, Frank Foy. Mr. Ventura added that: such settlements require court approval to take effect; other settlements, besides the one at issue, could materialize; and the ERB has pursued its own lawsuits in this context. Mr. Jacksha remarked that the placement agent disclosure policy was established in response to the alleged fraud and that the ERB monitors the disclosures made under it.

Mr. Ventura acknowledged the possibility of a legal remedy, besides that established in the FATA, that a member could pursue against the ERB for an alleged breach of fiduciary duty.

**Fund management.** Mr. Jacksha said that the ERB actively manages most of the fund's portfolio; it does not actively manage international stocks.

**Investments and economic development.** Mr. Jacksha said that the ERB is limited in its ability to make investments to enhance the state's economy because it must comply with the prudent investor rule, which requires that it make investments in the best interest of the fund's beneficiaries; nonetheless, managers do look for in-state investments that could enhance the state's economy. In contrast, he said, the State Investment Council (SIC) operates an economic-development-focused investment program. A member praised investments that help the state's economy, such as the expansion of a natural gas pipeline to Mexico.

**Funded ratio; fund solvency.** Ms. Goodwin reported: that, as of June 30, 2015, the ERB funded ratio was 63.7%, up from 63.1% on that day in 2014; that more recent figures on the funded ratio will be available in the fall; and that, ideally, a public pension plan is funded at 100%, but such an ideal is rarely attained. Responding to a member's statement that a mark of a healthy plan is an 80% or higher funded ratio, Ms. Goodwin pointed out that the direction a plan is headed in, not just its funded ratio, also matters. The member reiterated the concern about the fund's solvency and suggested that further program changes might be in order. Ms. Goodwin said that after the results of an actuarial study become available, the ERB will, if appropriate, recommend that the board adopt program changes.

Ms. Goodwin also expressed her view that despite anticipated volatility in investment performance, the fund will become increasingly solvent thanks to pension reform legislated in 2013, and she said that actuaries take into account the effects of increasing life expectancy of ERB retirees on fund solvency.

***The "Brexit" event.*** Mr. Jacksha commented that: Brexit, Britain's intended exit from the European Union, caused some market upset, which then subsided; some of the ERB's foreign investments took a hit as a result; about 15% of the portfolio consists of foreign investments; and the long-term effects of the ongoing event are hard to predict.

***Transparency policy; reporting.*** Ms. Goodwin noted that the ERB has been implementing most of its transparency policy for over eight years. She said that the ERB addresses potential conflicts of interest through gift-reporting and annual financial disclosure requirements. Mr. Ventura and Mr. Jacksha added that managers' fiduciary duties and the board's governance policy also help guard against conflicts of interest.

Mr. Jacksha indicated that ERB quarterly investment reports are available on the ERB website and are provided to the Legislative Finance Committee (LFC) and that the IPOC receives the substance of monthly reports disseminated to the LFC and the board, which meets monthly, through the ERB's periodic presentations to the IPOC. Ms. Goodwin indicated that the ERB will begin producing statements of financial position with its statement ending June 30, 2016. Mr. Jacksha explained that the approximately three-month lag in investment reporting is due to the fact that the ERB cannot complete its financial statements until after it receives its private assets reports, which are made quarterly.

### **Approval of Minutes**

On a motion made and seconded, the minutes from the May meeting were adopted without objection.

### **Report on the Deferred Compensation Plan Administered by the Public Employees Retirement Association (PERA)**

Wayne Propst, executive director of the PERA, apologized for his absence at the previous meeting and introduced Jon Grabel, CIO, PERA, and Karyn Lujan, PERA Smart Save plan manager, PERA, who presented as follows on the PERA-administered deferred compensation plan.

***Smart Save plan overview and administration.*** The PERA views the Smart Save plan as one of the three legs of a retirement-savings stool. The Smart Save plan, participation in which is optional and which is supplemental to the state's pension plan, follows a different structure from the pension plan in that it: 1) is participant-directed; 2) is defined-contribution; and 3) poses no risk of liability to the plan sponsor, the PERA. The PERA recently re-branded the plan to help clarify that it is a PERA-sponsored, not nationwide, program.

The PERA employs on-staff and contract personnel to administer the program. A program director and an administrative assistant are based in Santa Fe, and three regional representatives serve in the northern, central and southern regions of the state. The PERA also uses a third-party administrator, Nationwide Retirement Solutions, to perform recordkeeping services and an investment consultant to report fund metrics, which it does quarterly.

***Smart Save contributions withdrawal options, fees and activity.*** The payoff to a Smart Save participant depends on the amount, timing and duration of contributions and on the participant's investment choices.

A participant may withdraw money from the participant's plan upon retirement, upon separation from employment or while employed. Federal and state taxes on those withdrawals are generally withheld, but there is no federal penalty for early withdrawal. If employed, a participant may make withdrawals if the participant is 70 and one-half years or older, if the withdrawals are in the form of a loan or if the balance is \$5,000 or less and the participant has not contributed to the plan in the two prior years.

Each quarter, the PERA board reviews the plan's fees. Every participant pays the automatically deducted, annual fee of \$52.00, which is waived until either two quarters in the program pass or the account balance reaches \$1,000. In addition, a net expense ratio of .41% (as of the March 2016 quarter) applies to each account. The chart on page seven of the handout illustrates the cost advantage of paying institutional rate fees over retail rate fees.

Participants' target-date investment options consist of four investment classes, each with a selection of portfolios that range from conservative to aggressive. Participants also may select from a discrete list of other investment funds. The target-date investment options are illustrated in a chart on page eight of the handout. Target-date funds are designed to perform optimally within a time period determined by a participant's age and projected retirement year; they automatically update each year to make the portfolio more conservative.

Nationwide Retirement Solutions reported that, for the quarter ending in March, the program had \$494 million in assets and had 19,053 participants collectively employed by 289 public entities. PERA administrators are mindful of the gap between the average plan balance of \$22,800 and the median balance of \$6,632. They are working to enroll more younger participants.

***Plan accomplishments and initiatives.*** The number of enrollments increased substantially in response to the introduction of the program's "EZ Enrollment Form", which allows participants to enroll in a plan and choose a target-date fund-based portfolio. Program administrators have also improved the program by simplifying program distributional materials and by conducting seminars throughout the state.

To achieve its goals of enrolling more young participants, increasing employer

participation and improving the program, the PERA plans to: 1) broaden its investment education initiatives; 2) explore social media and other technology-related opportunities; 3) continue its traditional methods of outreach; and 4) evaluate its administrative fees.

### Questions and Discussion

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

***Plan eligibility.*** Ms. Lujan indicated that all PERA-covered employees, including state and local government employees, are eligible to participate in Smart Save; she added that a small number of schools — mostly colleges — have adopted resolutions allowing participation by their employees. Mr. Grabel said that he would follow up with information on when the program was first made available to all PERA-covered employees.

***Plan advertising and financial advice.*** Ms. Lujan indicated that, in addition to the PERA's participation in new employee orientations and its other initiatives to educate younger, prospective participants, Nationwide Retirement Solutions helps the PERA in those efforts. Ms. Lujan also said that Nationwide Retirement Solutions representatives may provide personalized financial advice.

***Tax consequences of deposits, loans and withdrawals.*** Ms. Lujan explained that: 1) money paid into the plan is tax-deferred; 2) interest payments a participant makes on a loan are deposited into the participant's account; 3) if money from a loan is not repaid, the Internal Revenue Service treats the amount borrowed as income for income tax purposes; 4) the standard percentage tax withholding applies to withdrawals, but is subject to participant adjustment; 5) the standard rules for withdrawals that apply to other types of retirement savings accounts apply to Smart Save withdrawals; and 6) Nationwide Retirement Solutions tracks and advises participants of their required minimum-distribution deadlines and makes distributions in accordance with those requirements.

### **Report on the PERA's Efforts to Enhance Transparency and to Improve Governance Structures**

Mr. Propst acknowledged Secretary of State Brad Winter, who has formerly served on the PERA board, in the audience.

Mr. Propst stressed that the PERA is committed to good governance and transparency and strives to improve in those areas. He said that the agency has taken steps in the last few years toward that improvement, and he underscored the great responsibility the PERA is charged with in overseeing the approximately \$14 billion in assets belonging to its members. Mr. Propst and Mr. Grabel described the PERA's governance and transparency as follows.

***Governance and transparency: key components.*** The PERA's efforts to protect its members' interests and the fund fall into three categories: 1) governance structure; 2) implementation and accountability; and 3) financial objectives.

***Governance structure.*** PERA members elect a board, which sets standards for good governance and transparency and which, in turn, directs staff to implement those policy initiatives fairly. Staff, in turn, direct key vendors who help with that implementation and who must make a commitment to the PERA's mission. Several layers of review — in the form of internal and external audits, external actuarial valuations of assets and liabilities, external custodian bank reporting and independent investment consultant reporting — help ensure that every cent under the agency's control is accounted for. The agency plans to act on recent internal audit recommendations for improvement. Meanwhile, it is encouraged by having: consistently received awards for excellence in financial reporting; reached full compliance with Governmental Accounting Standards Board Statements 67 and 68; responded quickly to requests for its public records; promoted a culture of accountability and ethics; and amended its vendors' contracts to include gift disclosure requirements.

To apprise the public of the PERA's activities, all meetings are conducted in accordance with transparency-focused laws and are streamed online. Further, meeting materials and governance rules are made available on the agency's recently improved website.

***Implementation and accountability.*** The PERA is implementing the results of a strategic planning process it began in July 2014, which involved all PERA staff. The process included a nonscientific survey of PERA members, a follow-up of which is planned for FY 2017. The process brought about a new mission statement, new core values and new organizational priorities. Those priorities are: 1) improving advocacy and outreach for members; 2) providing clear, transparent information about the status of the fund; and 3) improving outreach to employers and members. To implement its goals, staff are conducting retirement seminars throughout the state; holding monthly seminars in Santa Fe and Albuquerque; offering employers training in accounting; participating in relevant conferences; meeting with employers on request; and providing online monthly investments updates. The PERA is considering reporting on its website the salaries of its exempt employees and the amounts of the contracts it enters into.

***Financial objectives.*** As part of its focus on solvency, the PERA began in December to review its portfolio and, with input from consultants, concluded that it had too much of the assets it manages invested in private equity. It decided to expand its equity market exposure. In an effort to increase returns and decrease risk, the PERA also established as objectives: reducing to four the number of its asset categories, which, together, can weather different economic cycles; establishing new allocation targets; focusing on risk-adjusted returns; right-sizing its rate-of-return expectations; considering a reduction of its actuarial return assumptions; and implementing a comprehensive risk system to improve control of the portfolio. Elsewhere, the PERA comprehensively reviewed its investment policies and procedures and adopted an update of its investment policy statement. It has also reduced its investment manager fees by over \$10 million from the prior year and decreased its custody banking and consultant services fees.

***PERA fund update.*** FY 2016 was a challenging period for investors; the global bond market performed poorly and Brexit led to high market volatility. In May, at which time the PERA was managing \$13.94 billion in assets, the total cumulative amount in benefits paid from the fund since June 2006 was \$7.65 billion.

***Conclusion.*** Mr. Propst closed the presentation by stressing that the PERA's progress and achievements should be considered as the result of the agency's having accepted its heavy responsibility and having striven to meet the high standards the agency must hold itself to, rather than as a cause for self-commendation. He added that he believes the agency should maintain the highest standards possible, accept and recover from its failures and constantly strive to improve.

### Questions and Discussion

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

***Discount rate.*** In response to a member's point that changes to the PERA discount rate, now set at 7.75%, can drastically alter figures reflecting the fund's net pension liability, Mr. Propst said that, although staff consider the rate too high and that it cannot be known what the optimal rate is, the board decides the rate. He added that other states are beginning to lower their rates. The member remarked that it would be better to set a more realistic, lower rate, even given that doing so would raise the fund's reported net pension liability. Also in response to a member's question, Mr. Propst indicated that the PERA's investment managers do not use as their goal in making investments that rate of return. Mr. Grabel added that, for different categories of asset allocation, there are different benchmarks and guidelines that money managers are charged with meeting. Further, he said, the changes made to the fund's portfolio, which now features lower-risk investments, will likely result in higher returns.

***Effects of the state's economy on the fund.*** Mr. Propst and Mr. Grabel described an anemic state economy as having both positive and negative effects on the fund. A poor economy correlates to a lack of growth in payroll, which helps the fund, but also to low return from investments in the oil and gas industry, which hurts the fund.

### **SIC Performance Update**

Steve Moise, state investment officer, SIC, and Vince Smith, deputy state investment officer, SIC, reported as follows on the recent performance of assets under SIC management. Mr. Smith noted that Brent Shipp, chief financial officer, SIC, Evan Land, general counsel, SIC, and Charles Wollmann, director of communications and legislative affairs, SIC, were in the audience.

***Recent and future changes in funds' value.*** There was significant, concern-raising volatility during the year's first two quarters, largely due to Brexit. Net cash flows during that period neared negative \$150 million. At the end of the period, the value of assets, \$20.19 billion, approximated the value of assets at the beginning of the year. Meanwhile, overall returns for the period from June 1, 2015 through May 31, 2016 were negative.



Looking forward, poor performance in the oil and gas industry will temper inflows to the permanent funds. To illustrate, in May, the two major permanent funds' distributions exceeded inflows to those funds by \$49.8 million. The void created by lower inflows would be filled, if at all, by revenue from investment earnings. It is expected that returns over the next seven to 10 years will fall below average; the SIC has anticipated this trend since at least 2013.

**Asset allocation.** SIC-managed assets fall into three broad investment categories: 1) fixed income (23.7% of assets on May 31); 2) private market investments (31.8% of assets on May 31); and 3) public equity (44.6% of assets on May 31). In 2010, the SIC set out to restructure its portfolio to correct an over-reliance on domestic private equity. Historically, heavy concentration of assets in that class has been typical of public pension fund portfolios. The SIC aims to move the proportion of Land Grant Permanent Fund investments in each of eight categories toward new long-term targets, which were established with the goal of reducing volatility and mitigating risk. The recent removal of the constitutional limit on the amount of allowable overseas investments has been important to the SIC's portfolio restructuring efforts.

**Brexit.** In response to a member's request for commentary on Brexit's effects on the global economy and the state's investments, Mr. Smith spoke as follows. Although the outcome of the vote is likely to restrain the Federal Reserve System from raising interest rates, the event's effects on the American economy were, and will probably remain, minor. That is, the event did not majorly disrupt the stock market in the United Kingdom (U.K.) or in Europe; the Brexit vote was only advisory; and, were the U.K. to resolve to the leave European Union, its departure would not be for several years. Furthermore, the SIC's exposure to international securities and private equity, at about 16% to 17% of all investments, is relatively conservative and, compared with other sovereign wealth funds, low.

#### Questions and Discussion

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

**Tobacco Settlement Permanent Fund.** Responding to a member's concern about the prospect of lawmakers' sweeping money during a special session from the Tobacco Settlement Permanent Fund to the General Fund to resolve budget issues, Mr. Moise indicated that he had not received any inquiries related to such a prospect. A member questioned the prudence of applying money in the Tobacco Settlement Permanent Fund for the state's budget needs.

**Land grant and severance tax permanent funds.** Mr. Moise said that, even if inflows to the two major permanent funds sank to zero, there would still be distributions made from them because of the income from earnings on investments. But, he added, that scenario would cause the corpus and the amounts of distributions to shrink over time. Mr. Smith commented that economic forecasts show that, due to reduced inflows to the Severance Tax Permanent Fund, the chance of that fund maintaining its value over the next 50 years is only 25%. Mr. Smith offered to model the outcome of any situation for which a member provided a hypothetical distribution rate and other defined factors.

## **Report on the SIC's Efforts to Improve Governance Structures and Enhance Transparency**

***Governance.*** Several changes to the SIC's governance structures began in 2010. That year, lawmakers diluted the executive branch's influence over the council by allowing the legislature to appoint four of the council's members. The council then created new special committees to improve the council's system of checks and balances. Charters for each of those committees, which are composed of professionals in relevant fields, are available for review.

***Transparency.*** The SIC believes it ranks high among sovereign wealth funds in the measure of transparency. Council and committee meetings are public, and council meetings are webcast and archived. The SIC's website includes council and committee agendas, minutes and other related materials, including the council's transparency and disclosure policy and manager statements. Those statements include disclosure of political contributions. Of note, the New Mexico Foundation for Open Government formally recognized Mr. Wollmann in 2012 for his work to promote transparency.

Mr. Shipp elaborated on the topic of management fees by referring to a table on page 13 of the presentation handout, showing those fees for 2015, including which of them are in the form of profit sharing. Mr. Shipp pointed out: that the SIC presents those figures to the PERA and the ERB for comparison; that the fees are incorporated into the SIC's budget; that there is growing emphasis nationally on disclosure in this context; that management fees paid by the SIC in 2015 totaled 57 basis points, or a little over .5% of all assets; and that administrative costs for that year were four basis points.

### Questions and Discussion

On questioning, the committee and presenters addressed the following topic.

***Management fees.*** A member remarked that the profit-sharing fees paid in the real estate asset class seemed high. Mr. Shipp explained that that class has a high number of deals, and, thus, fees. Mr. Smith cited another reason for the higher fees: the portfolio's maturity. He also said that the SIC consistently monitors the market and fees and uses techniques to lower them. Mr. Moise agreed to provide committee staff with additional details on the SIC's fee structure agreements with managers.

### **Update by the SIC on Private Equity Investments in Businesses in the State and an Early Stage Seed Venture Funding Program**

Mr. Wollmann prefaced the presentation by saying that the SIC's Private Equity Investment Program, in which the SIC has been allowed by law since 1993 to make investments that yield a rate of return lower than the market rate of return, is performing successfully. He gave as an example of the program's success a company that the SIC invested in that was recently acquired for \$90 million. Mr. Moise and Mr. Smith presented as follows on the Private Equity Investment Program and the New Mexico Catalyst Fund administered by the SIC.

***Private equity investment.*** From 1993 to 2003, the internal rate of return in the program,

which was designed to energize the state's economy, was negative 18.2%. In 2004, the council changed its strategy and hired an outside expert, Sun Mountain Capital, to manage the program's funds. From then to now, the return rate has been 4.2%. Despite some losses in investments, performance is generally improving. The SIC gathers data quarterly on the program's economic impact; as of December 31, 2015, the program has had 6.3 times the amount of investment from external investment than from internal investment. In the last quarter of 2015, the program's economic impact in the state was almost \$50 million. Lastly, the program has created in-state jobs whose average salary, at \$41,799, exceeds the state average.

***New Mexico Catalyst Fund.*** The newly launched, early- and seed-venture fund administered by the SIC, the New Mexico Catalyst Fund, consists of a combination of state, federal and private funding. The federal government gave permission for previously appropriated but unused money to be used for the fund. Through it, fund managers, who will share in the risk-taking, will join in investing in approximately 50 to 60 promising, early-stage, in-state businesses. Those investments will most likely begin in the year's third quarter.

***Conclusion.*** Mr. Moise concluded the SIC's presentations by: articulating the SIC's desire to help create and retain highly successful businesses like Microsoft; noting that several handouts relating to topics covered are available for distribution; and remarking that the SIC is in the process of establishing a compliance office. He also stressed the importance of maintaining the health of the funds, which help offset the cost of state government, and keeping inflows to and outflows from the funds in balance. Lastly, he expressed thanks for lawmakers' appropriation of sufficient amounts to pay for the professional expertise and other resources necessary for effective fund management.

#### Questions and Discussion

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

***State's business climate.*** When asked for the SIC's views on whether the state has the resources needed to encourage business development, Mr. Wollmann replied that the state has improved in this area by having provided, through the SIC, a means for businesses across the state to secure investment capital. Mr. Moise added that the state seems to be more motivated to build a business-friendly mindset and environment and is encouraging entrepreneurial success more. The member encouraged the presenters to inform legislators if legislators can help increase awareness of the SIC's private equity investment efforts. Another member commented on the connection between a good business climate and attracting new and expanding businesses and the importance of helping governments finance investments that promise payoffs, like Roswell's airport project. A third member stressed the importance of venture capital in bringing about the jobs of the future.

***Private equity investments.*** Mr. Wollmann reported that some of the program's investments have resulted in the creation of many companies, some of which are still active, some of which have created thousands of jobs, some of which have been sold at a profit and

some of which have failed. Many relevant program figures, he said, are captured in quarterly reports. He added that the council is taking a methodical approach toward the program. A member spoke highly of the state's pursuit in this capacity to help companies, especially technology companies, get off the ground and provide opportunities for good jobs.

***Prospect of a state bank.*** When asked about the possibility of creating a state bank, Mr. Moise said that related legislation has been introduced in the past; at that time, the SIC analyzed and, through the bill's fiscal impact report, commented on, the prospect. Mr. Wollmann added that North Dakota has such a venture investment bank. Doing that in New Mexico would be difficult for a number of reasons; however, the council has not taken a position on the matter. The member requested a copy of the SIC's analysis.

***Litigation.*** Concerning recent SIC-sponsored litigation aimed at recovering money lost from investments that were entered into under improper circumstances, Mr. Smith reported that the Paul Hastings Law Firm of New York generated a report containing facts used in litigation initiated to recover the money. He said that the council has directed the firm to refrain from distributing the report as long as the litigation continues. A member asked whether that direction was recorded in the council's minutes, and Mr. Smith agreed to check. Mr. Wollmann added that over \$32 million has been recovered; some of that will be used to pay lawyers' contingency fees. He also said that the SIC is pursuing further financial recovery.

### **Adjournment**

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

Revised: August 23, 2016

**TENTATIVE AGENDA  
for the  
THIRD MEETING IN 2016  
of the  
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**August 29, 2016  
Room 322, State Capitol  
Santa Fe**

**Monday, August 29**

- 9:00 a.m.           **Call to Order and Welcome**  
—Senator George K. Munoz, Chair  
—Representative Monica Youngblood, Vice Chair
- 9:05 a.m.       (1)   **Retirement Insecurity of Private Sector Workers and State Reform Efforts**
- **Overview of Private Sector Retirement Insecurity in the United States**  
—John C. Scott, Director, Retirement Savings Project, The Pew Charitable Trusts; Adjunct Associate Research Professor of Public Policy, University of North Carolina at Chapel Hill
  - **Private Sector Retirement Landscape: Reforms by Several States and Data for New Mexico**  
—Gerri Madrid-Davis, Director, Financial Security and Consumer Affairs, State Advocacy and Strategic Integration, Government Affairs, AARP
  - **Private Sector Retirement Initiatives: Secure Choice or Marketplace Program**  
—Jeremy Smith, Associate Director, Aspen Institute Financial Security Program
- 10:45 a.m.           **Approval of Minutes**
- 10:50 a.m.       (2)   **Policy Considerations**
- **Additional Options for Private Sector Retirement Plans**  
—Steve Hill, Director, Retirement Security Campaign, Service Employees International Union
  - **Applicability of the Federal Employee Retirement Income Security Act of 1974 and Introduction to the National Conference on Public Employee Retirement Systems (NCPERS) Secure Choice Model**  
—Hank H. Kim, Executive Director and Counsel, NCPERS; Treasurer, Board of Directors, National Institute on Retirement Security

• **Identifying and Accomplishing Objectives for Private Sector Retirement Security**

—Arun Muralidhar, Ph.D., Chairman, Mcube Investment Technologies;  
Adjunct Professor of Finance, George Washington University School  
of Business

12:30 p.m.

**Lunch**

1:45 p.m.

(3) **Economic Effects of Retirement Benefit Distributions**

—Wayne Propst, Executive Director, Public Employees Retirement  
Association

—Jan Goodwin, Executive Director, Educational Retirement Board

3:30 p.m.

(4) **Update from the State Investment Council on the Status of Legal Claims**

—Steven K. Moise, State Investment Officer

4:30 p.m.

**Adjourn**

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

**August 29, 2016  
Room 322, State Capitol  
Santa Fe**

The third meeting of the Investments and Pensions Oversight Committee (IPOC) was called to order by Senator George K. Munoz, chair, on August 29, 2016 at 9:20 a.m. in Room 322 of the State Capitol.

**Present**

Sen. George K. Munoz, Chair  
Rep. Monica Youngblood, Vice Chair  
Sen. Pete Campos  
Sen. Jacob R. Candelaria  
Rep. Miguel P. Garcia  
Rep. Larry A. Larrañaga  
Sen. Bill B. O'Neill  
Rep. Jane E. Powdrell-Culbert  
Rep. William "Bill" R. Rehm  
Rep. Jim R. Trujillo

**Absent**

Sen. Carroll H. Leavell  
Sen. Steven P. Neville  
Rep. Luciano "Lucky" Varela

**Advisory Members**

Sen. Ted Barela  
Rep. Roberto "Bobby" J. Gonzales  
Sen. John C. Ryan  
Rep. Tomás E. Salazar

Sen. Carlos R. Cisneros  
Sen. Stuart Ingle  
Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papen  
Sen. William H. Payne  
Sen. Michael S. Sanchez  
Rep. James E. Smith  
Rep. Sheryl Williams Stapleton

**Guest Legislator**

Sen. Howie C. Morales

**Staff**

Lisa Sullivan, Staff Attorney, Legislative Council Service (LCS)  
Anna Martin, Intern, LCS  
Tessa Ryan, Staff Attorney, LCS

## **Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and other written testimony are in the meeting file.

## **Monday, August 29**

### **Retirement Insecurity of Private Sector Workers and State Reform Efforts**

Presenters discussing the topic of private sector workers' retirement insecurity and states' efforts to reduce that insecurity testified together as follows.

#### **Overview of Private Sector Retirement Insecurity in the United States**

John C. Scott, director, Retirement Savings Project, The Pew Charitable Trusts (Pew), and adjunct associate research professor of public policy, University of North Carolina at Chapel Hill, gave his presentation using a handout titled "Who's In, Who's Out: National Landscape of Retirement Insecurity" and spoke as follows.

***Importance of saving for retirement.*** Saving for retirement is increasingly important because the term of and expenses for the average person's retirement are greater than in the past.

***Current situation of retirement saving.*** The following data represent one picture of the private retirement savings landscape: 1) as a rule of thumb, a worker should have saved at retirement at least 10 times the worker's annual income and, during retirement, live on social security benefits and no more than 4% of the person's total retirement savings each year; 2) the median income for households whose members are between 55 and 64 years old is \$56,575; 3) the median deferred compensation savings account for someone in that age range is about \$76,000; meanwhile, according to the rule of thumb, it should be over \$500,000; 4) there is a collective retirement savings shortfall of \$4.13 trillion; 5) more than one-half of American households face a standard-of-living decline in retirement; 6) 56% of "silent generation" Americans, and even higher percentages of succeeding generations, have debt; and 7) one-half of elderly singles and one-third of the non-single elderly die with less than \$10,000 in assets.

***Access to retirement saving plans by state.*** It is helpful to understand three key terms and their definitions in the context of retirement saving: 1) "access", or the availability through an employer of a retirement saving plan; 2) "take-up", or taking advantage of such a plan; and 3) "participation", or the overall rate for all workers of participation in such a plan.

Graphs on pages seven through 10 of Mr. Scott's handout depict access by state and show that, among states that have implemented public initiatives for private sector retirement savings, Wisconsin has the highest access and participation rates; Florida has the lowest; Indiana has the highest take-up rate; and Nevada the lowest.



***Factors associated with lack of access to retirement saving programs.*** Research reveals that such factors as employer size, industry, income, age, education, race and ethnicity, correspond to access and participation rates. Employees of small employers tend to have lower access rates compared with those of large employers. Access rates range widely by industry. The manufacturing and financial services industries' rates approach 70%, while the rate within the leisure and hospitality industry occupies the lowest position on the list, at 34%. Access also tends to correspond to income, with lower income associated with lower rates and higher income with higher rates. Data further show that access varies by race and ethnicity. Hispanics have a relatively low 38% access rate. A graph on page 16 of the handout shows the percentages of part-time and full-time workers who cite each of four reasons for not participating in a retirement saving plan: "eligibility"; "affordability"; "lack of need"; and "did not think of". Eligibility and affordability are most often cited as reasons for nonparticipation.

***Conclusion.*** The implications of Pew's research are that: retirement savings are important to retirement security; access to workplace retirement plans matters; workers participate in those plans when given the chance; and the focus for strengthening participation should be on small employers, certain industries, young people, low-income households and under-served communities.

#### Private Sector Retirement Landscape: Reforms by Several States and Data for New Mexico

Gerri Madrid-Davis, director, Financial Security and Consumer Affairs, State Advocacy and Strategic Integration, Government Affairs, AARP, gave her presentation using a handout titled "Overview of State Reforms and the New Mexico Retirement Security Landscape". Ms. Madrid-Davis noted that several audience members came to show support for AARP's message. She spoke as follows about the state of retirement security across the nation and in New Mexico.

***Workplace access to retirement saving plans.*** Studies show that people with access to retirement saving plans are 15 times more likely to save for retirement. However, data from 2013 show that only about 55% of private sector employees age 25 to 64 across the nation had access to retirement saving plans.

In New Mexico, more than 60% of private sector employees, and more than 60% of "multi-cultural" workers, lack access to a retirement saving plan. Also in New Mexico: 1) 52% of those age 55 to 64 have access to a retirement saving plan; 2) 82% of Asian workers, 68% of Hispanic workers, about one-half of African-American workers and about one-half of Anglo workers lack access; 3) in a measure of educational attainment, more workers without a high school degree (74%) lack access than do those with a bachelor's or higher degree (49%); 4) more women (66%) than men (58%) lack access; 5) small-firm employees lack access at a rate higher than that for large-firm employees; and 6) low-income employees lack access at a rate higher than that for high-income employees. More specifically, in the Albuquerque metropolitan area: 1) there is a 53% access rate and a 44% participation rate; 2) the trends relating to employer size and access also apply; and 3) only one in three people who identify as Latinos or Hispanics have access to a retirement saving plan.

***The nationwide movement to encourage retirement saving.*** Five ways to improve retirement saving rates are: 1) increasing availability, including with payroll deductions; 2) providing for automatic enrollment in plans; 3) simplifying investment by providing fewer, appropriate risk-level default options; 4) providing for automatic escalation, or contribution levels that correlate with wage increases; and 5) providing for lifetime income streams.

Over one-half of the states have set out either to study the implementation of a retirement saving program or to establish such a program. Increasingly, states are realizing that if they do not encourage retirement saving now, they will spend more in the future on helping those who save too little for retirement. Two options for states wishing to encourage retirement saving are to: 1) establish an automatic individual retirement account (IRA) program; or 2) establish a marketplace in which employers can select plans to offer employees. A table in Ms. Madrid-Davis' handout identifies the states that have selected one of these options, and another lists some features of each option.

AARP has conducted many public-opinion surveys to determine the level of agreement with the statement that elected officials should support retirement saving plans and whether the public would think more highly of a small business that offered such a plan to its employees. Regardless of their political affiliation, most people answered yes to these questions. A link to the results of this polling will be shared with any interested members.

Ms. Madrid-Davis concluded by saying that the result of policymakers' efforts will be a greater population of retirees who have sufficient means instead of unmet financial needs. She also highlighted an online link, given in the handout, to additional, related information, including state tracking and research papers.

#### Private Sector Retirement Initiatives: Secure Choice or Marketplace Program

Jeremy Smith, associate director, Aspen Institute Financial Security Program, described the Aspen Institute as a nonpartisan forum for values-based leadership and the exchange of ideas. He then testified as follows.

There is a nationwide crisis in the financial state of future retirees that stems in part from the lack of access to retirement plans. This situation is particularly dire in New Mexico. Mr. Smith seconded Ms. Madrid-Davis' statement that people are 15 times more likely to save for retirement when they have that access.

***Secure Choice programs.*** Several states have established "Secure Choice" programs, or programs based on IRA-like products. From an employee perspective, Secure Choice plans provide for: 1) automatic payroll deductions; 2) automatic enrollment, with the option to disenroll (a feature that harnesses the power of inertia); 3) a default saving rate; 4) simple investment choices (consisting of ranges selected by a board); 5) no employer match; 6) tax-exempt contribution limits otherwise associated with IRAs; 7) capped fees; and 8) portability within the state. From an employer perspective, Secure Choice programs require that the

employer: 1) if it exceeds a size threshold, enroll; 2) set up the payroll deduction; 3) pay low administrative costs and perform administrative duties; 4) not assume any fiduciary responsibility or the responsibility for ensuring that the selected plan meets a given standard; and 5) pay a penalty for non-enrollment. From a state perspective, the programs require that the state: 1) establish an independent oversight board; 2) conduct a feasibility study to, in part, inform program design; 3) select one or more providers; and 4) monitor compliance.

A table on page four of the presentation handout shows the variation within, but also many similarities among, five states' Secure Choice programs.

***Marketplace programs.*** Washington and New Jersey have established marketplace programs. From an employee perspective, these programs provide for: 1) voluntary enrollment; 2) simple investment choices; 3) in certain cases, an employer match; 4) in certain cases, higher contribution limits; 5) capped fees; and 6) portability within the state. For employers, the programs feature: 1) voluntary participation; 2) connection through an online portal of employers to low-cost plans; 3) employer assumption of fiduciary responsibility; 4) a higher administrative burden; and 5) penalties for non-enrollment. From a state perspective, the programs require that the state: 1) establish terms for market participation; 2) select an administrator to operate the market; 3) approve qualified plans; 4) assume no fiduciary responsibility; and 5) monitor compliance.

***Comparison between Secure Choice and marketplace programs.*** Secure Choice plans' chief advantages are that they: feature automatic enrollment, which can dramatically boost the number of savers; are simple for, and limit the risks of, employers; and are simple for, come at low costs to and present default choices to employees. The primary disadvantages to the plans are that they: impose a mandate on employers, which may be a hard sell in some areas; do not enjoy federal Employee Retirement Income Security Act of 1974 (ERISA) protections; and require that the states that adopt them assume ongoing responsibility.

Marketplace programs' advantages include that they: limit the role states play in them; give employers the choice to participate; and potentially feature an employer match, which can lead to higher contribution levels. The primary disadvantages are that: they might not lead to a meaningful expansion in coverage from existing levels; enrollment is not automatic; the employer carries administrative and fiduciary responsibility; and the incentive for employers to participate in them is weak.

Mr. Smith closed by noting that the Aspen Institute does not advocate for states to adopt a particular program. He also highlighted two other handouts distributed to the committee: an issue brief summarizing the retirement saving problem and opportunities for states to address it; and a bulletin on how the saver's tax credit helps expand retirement savings.

### Questions and Discussion

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

***Reasons for state action in the area.*** Responding to a member's question of why, when 401(k) plans and IRA and Roth IRA options already exist, a state should involve itself in private sector retirement saving: 1) Mr. Smith said that: state-sponsored programs increase workplace access to the plans and, thus, retirement saving, and, despite the existence of that market and changes in the economy, retirement saving for the past four decades has been flat, which supports the proposition that retirement saving will not increase without state action to enable widespread access to private sector retirement savings; 2) Mr. Scott said that: the results of polling of small business employers show that they would like, but do not know how, to help their employees in this respect; states can help fill that information gap; surveys show that employees appreciate having retirement plan access in the workplace; and many people plan to work as long as they can because they know they have too little saved for retirement; and 3) Ms. Madrid-Davis said that: state programs can provide tremendous value for employers, especially small employers, by making it easier and less costly for employers to offer retirement plans and allowing those employers to focus instead on running their business; and, despite recent innovation in the financial services industry, retirement saving is still flat.

Two additional presenters offered their perspectives. Hank Kim, executive director and counsel, National Conference on Public Employee Retirement Systems (NCPERS), and treasurer of the board of directors, National Institute on Retirement Security, said that when a state gets involved in private sector retirement planning, it vets — and thereby helps employers trust — plan choices. A state's imprimatur on a plan, he said, increases the likelihood that employees will participate. Steve Hill, director, Retirement Security Campaign, Service Employees International Union, said that financial services firms' solicitation of plan sales through small employers (i.e., those with fewer than 1,000 employees) is generally cost-prohibitive. State programs can create pools of investors for more cost-effective provision of financial services. A member underscored the notion that financial services firms are unwilling to work with small employers in this area because of the low profit potential of that work, and the member noted that, when they do, the fees charged are often higher than for large employers.

A committee member remarked that the state's inaction in this area will magnify its future financial obligations, such as in the area of Medicaid, and requested a brief update on the health of the social security system. Ms. Madrid-Davis reported that AARP anticipates future cuts in social security benefits, which will exacerbate people's financial problems in retirement. Mr. Scott agreed that the social security system will be inadequate to satisfy people's future financial needs, particularly given the rising costs of such expenses as long-term care, and he reported that younger workers' awareness of the social security system's poor fiscal condition is prompting many of them to think about saving for retirement. Mr. Smith countered that data show that even the belief in social security insolvency is not necessarily motivating people to save or to save enough.

***Options for program design.*** The presenters described additional aspects of Secure Choice programs as follows: 1) Mr. Smith likened the programs to 529 education saving plans and said that: states can get input on, and design, plan structure; states can cap plan-related fees;

a state-created board can make and monitor investments; if not overridden, default investment choices take effect; plan members can make more aggressive investment choices from a limited range; a state can choose the type of plan, whether a traditional or Roth IRA, it institutes, and the tax implications of that type then follow; and employers are exempt from the program if they offer their employees a plan more robust than the state-sponsored plan; 2) Mr. Scott added that: states can outsource related functions, like plan education and customer service; and most states that have adopted the programs have selected Roth IRA plans because they carry more withdrawal flexibility; 3) Ms. Madrid-Davis added that the Roth IRA option carries fewer immediate revenue consequences for the state; and 4) Mr. Kim added that, if the state designed its plan to be exempt from ERISA, it would be prudent for it to enact ERISA-like laws, for which some trust responsibilities could be delegated.

***Ideas for a New Mexico program.*** Committee members expressed the following diverse reactions to the idea of instituting a retirement program: 1) such a program would be good for New Mexico; 2) lawmakers should explore options for creating incentives for employers to offer retirement plans; 3) participants' tax savings at the front end are important; 4) the state should not impose related mandates on small businesses, which already struggle to follow federal health insurance mandates; 5) it would be helpful to better understand the experience of small states that have instituted such a program; 6) it would be helpful to better understand the administrative burden such a program would place on employers; 7) businesses should be made aware of those burdens; 8) such a program should not displace existing employer-sponsored plans; 9) participation in such a program should be voluntary for employers and employees; 10) there should not be any state-imposed caps on fees; rather, market competition should influence fee levels; 11) adopting the New Jersey model would be a politically heavy lift in New Mexico; and 12) businesses should be given options and employees should be allowed pre-retirement access to their savings.

The presenters responded as follows: 1) Mr. Smith said that: as an incentive, Massachusetts waives its annual \$300 franchise fee for participating businesses; and other states have explored offering a small tax credit approximating the cost of plan set-up; 2) Mr. Scott said that: the United States Department of Labor has said that such a credit is allowable if it is in an amount reasonable and related to the cost of compliance; and a federal tax credit for such participation is available, but it is difficult to claim and not commonly known; 3) Ms. Madrid-Davis said that: offering such an incentive would be harder for states with budget shortfalls; and there is talk of making the federal savers tax credit for individuals more robust; and 4) Mr. Hill said that: the programs need not impose a mandate on employers; rather, employers would simply have to add a line to their payroll deductions.

A member asked if any state has married its public pension program with its private sector retirement saving program. Ms. Madrid-Davis replied that some states have explored that idea, but no state has pursued it, in part because different rules apply to the different programs.

Another member asked why a governing board to oversee a retirement saving program was needed. Ms. Madrid-Davis responded that the legislature may choose from a range of options concerning where to place decision-making power; some states give such governing boards autonomy, while others impose related responsibilities on their state treasurer's offices.

### **Approval of Minutes**

On a motion made and seconded, the minutes from the July meeting were adopted without objection.

### **Policy Considerations**

#### Additional Options for Private Sector Retirement Plans

Mr. Hill said that the Service Employees International Union is engaged in a campaign to expand retirement security for everyone. He gave a personal account of retirement insecurity: both his parents worked hard at many low-wage jobs during their working lives. Since they were unable to save for retirement, they now depend on their social security income to get by. Mr. Hill described the situations of other individuals, pictured in his presentation handout, who, similarly, are in low-wage jobs and have not saved for retirement. He continued as follows.

Most people who work in the service industry have nothing saved for retirement and have no workplace access to a retirement saving plan. The key to helping correct this problem is automatic enrollment in such a plan, which dramatically increases the participation rate, even among low-wage workers. Nonetheless, even states that implement retirement saving programs can do more to close the gap between people's retirement savings and financial needs.

A state's program can include an option for employers to contribute to their employees' plans. Such a feature creates flexibility for employers, eases the burden on small employers and improves the opportunity for retirement security.

In sum, one-half of Americans have nothing saved for retirement; this circumstance constitutes a crisis, one that is particularly salient in New Mexico. The problem needs to be addressed.

#### Applicability of ERISA and Introduction to the NCPERS Secure Choice Model

Mr. Kim began by explaining that ERISA applies to private, and not public, sector employee benefit plans. He continued as follows: 1) the legislature has the power to design its state's retirement plan, and it can model it after another state's if it wishes; 2) under ERISA rules, the plan's named fiduciary protects participants' assets and is charged with acting in their best interests; 3) a state that chooses to institute an ERISA-based plan could name an entity to hold all related fiduciary responsibility and could greatly limit employer liability; 4) ERISA plans are subject to disclosure and reporting requirements; 5) ERISA has been in effect for over 40 years; 6) if a state chose to institute a plan exempt from ERISA, it would have to establish a set of participant protection rules in its place; 7) a state's retirement saving plan can be based on IRAs, defined contribution or defined benefit, the last two of which are subject to ERISA; and 8) in

2010, the NCPERS developed another model, the Secure Choice Pension Program, which was designed to reflect current economic conditions, be portable, be simple to administer and endure for years to come.

More details about Mr. Kim's points are in the written testimony accompanying his presentation.

#### Identifying and Accomplishing Objectives for Private Sector Retirement Security

Arun Muralidhar, chairman and co-founder, Mcube Investment Technologies, and adjunct professor of finance, George Washington University School of Business, prefaced his presentation by saying that his remarks were not made on behalf of any organization with which he is affiliated.

He continued as follows: 1) states should help temper retirement insecurity because, if they do not, they will have to face the consequences of inaction, with increased public assistance; 2) a state's reform process, involvement of stakeholders, articulation of objectives and design features matter more than whether Secure Choice or the marketplace approach is chosen as the state's model; 3) once a state decides, it should continually evaluate and revise the plan; 4) stakeholder groups include workers, employers and the financial services industry; 5) in California, with its large minority and financially unsophisticated populations, participants cited as the objectives they wished to see for a plan those listed on pages seven and eight of the presentation handout; they also indicated that they most trusted professional advisors to manage their money; 6) the majority of those surveyed said that they were confident that they could save for retirement if given access to the type of retirement saving plan being discussed; 7) states generally want to help their residents save but do not want to assume additional liability; 8) companies generally want ease of implementation and to be absolved of all legal liability; 9) financial service firms want to run their businesses as though there were no or little government involvement; 10) as an example, a set of objectives that, on a high level, should satisfy all stakeholders is represented by the acronym "SUPER ACCESSIBLE": sustainable; universal; portable; easy for the state to administer; returns that are high; adequate pension; choice (of replacement rate); certainty of outcome; easy for employers; smoothing of consumption; simple reporting; insulated from political risk; be inclusive of private sector; low costs; and easy to regulate; and 11) design features, which should follow the state's objectives, are listed on page 13 of the handout.

#### Questions and Discussion

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

***People's expectations concerning benefits; potential state liability.*** Responding to a member's comment that people generally want their retirement saving plans to provide a guaranteed benefit, even if that benefit is low, presenters responded as follows: 1) Mr. Muralidhar said that there is a range of investment products designed to produce retirement income; the array includes options that offer guarantees or defined benefits; 2) Mr. Kim said that

qualitative studies show that most people do not seek a guarantee, but want some protection against risk and the assurance that they will not be defrauded; and 3) Mr. Smith mentioned the option of choosing a model of investment product that helps guard against panic-induced early withdrawals.

A committee member expressed the concern that participants of a state-sponsored plan might expect the state to make them whole if the plan's investments perform poorly. In response, Mr. Kim said that, unlike in the state's public employee pension system, the plans being discussed are not defined benefit plans, so participants necessarily have different expectations about the program; he added that participants need to be made aware of the distinction. Mr. Muralidhar underscored the importance of education in this context and the distinction between defined contribution and defined benefit plans. Another committee member remarked that the state could guard against potential lawsuits by simply not waiving its sovereign immunity in this context.

***Interaction of plans with public social welfare programs.*** A committee member expressed concern about the possibility that low- and middle-income people's participation in such a retirement saving plan would render them ineligible for such social welfare programs as Medicaid. Mr. Kim, Mr. Muralidhar and Mr. Smith speculated that, for various reasons, that outcome is unlikely. Mr. Hill noted that the issue arose in California, and he offered to look into the conclusion reached there. Mr. Scott added that retirement savings can help delay the onset of social security benefits distributions, thereby increasing the eventual amount of social security benefits received.

***Next steps.*** A committee member stressed the importance of the state instituting a private sector retirement program and suggested a task force to discuss and decide on the details of such a program.

### **Economic Effects of Retirement Benefit Distributions**

Jan Goodwin, executive director, Educational Retirement Board (ERB), and Wayne Propst, executive director, Public Employees Retirement Association (PERA), presented as follows on the economic benefits to New Mexico that flow from their respective programs.

#### Information from the ERB

***Economic effects of the ERB's retirement payments.*** The ERB's direct and indirect economic benefits to the state come in large part from benefit payments. Benefit payments averaged \$1,819 per month (or \$21,828 per year) per retiree, of which there were 44,043, in fiscal year (FY) 2015. In all, the ERB distributed \$981.8 million in benefits in FY 2016. A graph on page five of the ERB presentation handout shows that distribution by county and illustrates that a portion of all benefits are paid outside the state. A table on page six shows, by county, the amounts distributed in categories, including: 1) "disability" (which consists of payments to participants not yet eligible to retire, but who, because of health reasons, cannot continue employment); 2) "normal" (which consists of payments to participants who have had



only ERB, not PERA, employers); 3) "PERA reciprocity" (which are payments transferred to PERA under ERB-PERA reciprocity arrangements); and 4) "qualified domestic relations order" (which are payments to individuals with a joint marital interest in a benefit). The following statistics compiled by the National Institute on Retirement Security using 2012 data and sophisticated economic modeling software (Implan) also illustrate the ERB's direct economic benefits: 1) for each employer-contributed dollar, there is \$5.19 in economic activity in the state; 2) ERB retirees created \$1.1 billion in total economic output in the state in 2014; and 3) ERB benefit spending generated \$218.7 million in federal, state and local tax revenue and created 7,796 jobs. Those statistics were updated recently but have not been officially released. A table on page eight of the handout shows how ERB pension payment spending affects a variety of industries, and a graph on page nine shows that the spending power in New Mexico is relatively high compared with that in other states.

Also constituting an economic benefit, the ERB employs 67 full-time employees, most of whom live in Santa Fe and Bernalillo counties. The payroll and benefits for those employees in FY 2016 totaled \$5,159,701.

***Investment returns and contribution rates.*** A graph on page 10 of the handout shows, by fiscal year for the past 15 fiscal years, the rates of return, gross of fees, on ERB investments in relation to the 7.75% target. Despite the fluctuation in rates in that period, the ERB has consistently met its benefit payment obligations. A table in the second presentation handout details aspects of the fund's performance. In recent years, despite changes to law that allow investments in private equity and infrastructure, which help to reduce performance volatility, market conditions have made it impossible to meet the target.

A table on page 11 of the primary handout shows the schedule of contribution rates dating back to 1957. The member contribution rates in FY 2015 were 7.9% for employees with an income below \$20,000 and 10.7% for employees above that threshold.

#### Information from the PERA

A PERA presentation handout shows the employment categories in which the 49,173 employees served by the PERA fall and shows the types of plans that the agency administers. The plan types include a deferred compensation plan — a supplement to the defined benefit plan — which was reported on earlier in the summer.

***Economic effects of PERA's retirement payments.*** The PERA's benefit payments also significantly boost the state's economy. A graph on page three of the presentation handout shows those payments for FY 2016, which totaled over \$1 billion, by county. Most of that total was paid to retirees who reside in the state. Some was paid in the form of refunds for contributions paid by members who left their PERA-based employment. A graph on page four shows the number of PERA retirees in each county, in the entire state and outside the state. A table on page five gives a breakdown of average annual pension payments per member, average age at retirement and average service credit, all by PERA employment category, for FY 2015 and for all

measured fiscal years. The PERA program is associated with: 1) \$4.48 in in-state economic activity per dollar of employer contribution; 2) \$1.2 billion in total economic output in the state in 2014; and 3) \$231.6 million in federal, state and local tax revenue generated, and 8,253 jobs created, from benefit spending.

PERA activity supports the employment of 84 full-time employees in the PERA's Santa Fe and Albuquerque offices and produced \$6.155 million in FY 2016 payroll and benefits.

On the last day of FY 2016, the PERA fund value was \$14 billion, and over \$501 million was invested in the deferred compensation plan.

### Questions and Discussion

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

***Benefit payments' economic effects in counties.*** In relation to the graph on page nine of her handout, Ms. Goodwin speculated that the value of a dollar in New Mexico has not changed much over time. In response to a member's question about the ratio of benefit payments to gross domestic product in each county, Ms. Goodwin suggested that the ratio was probably rather high.

***Longevity of public safety personnel.*** A member brought up the subject of the longevity of police officers, firefighters and corrections workers. The member referenced data from California suggesting that those classes of public employees' longevity is lower than for other classes, which, if true, might mean that the PERA funded ratio is higher than has been reported. Mr. Propst expressed a willingness to review that data, but said that the PERA's assumptions are based on annual actuarial valuations and periodic tests, which do not reveal any significant distinction among those classes.

***Funded ratio; investment returns; assumptions; reporting.*** Ms. Goodwin indicated that: 1) the ERB is in the process of calculating the funded ratio for FY 2016, which will, due largely to changes in law, most likely increase by between 1% and 2% from FY 2015; 2) it will be many years before that calculation shows significant improvement, particularly with return assumptions not being met; 3) the ERB and the PERA manage mature funds, meaning that returns from the funds' multi-billion-dollar portfolios help close the gap between contributions received and benefits paid; and 4) that shortfall is not necessarily problematic and is typical of many public pension plans.

A member criticized the ERB's reporting to the committee and to plan participants on the funded ratio and investment returns and expressed the member's own and the member's constituents' concern about the consistent disparity between the amounts of ERB contributions and ERB payments. The member spoke of calls from the press about, and meetings with plan participant constituents who are surprised to learn of, the imbalance. The member also pointed out that the ERB presentation handout showed investment performance gross — not net — of fees and characterized reports to the committee as misleading. Ms. Goodwin noted that, at the

time the chart on page 10 of the handout was produced, net-of-fees figures were not yet available. She added that the ERB website features a lot of information about fund performance and distributions. The member contended that the members' constituents do not use the website. Ms. Goodwin said that related information is also reported in the ERB newsletter. Bob Jacksha, chief investment officer, ERB, who was in the audience, testified that: 1) the net-of-fees reports show that the difference in gross-of-fees and net-of-fees figures is nominal (about .2% or .1%), in part because most fees are deducted before the gross-of-fees numbers are calculated; 2) most presentations to the committee that include investment return figures report those figures as net of fees; and 3) the ERB notes instances in which that is not the case.

Following the exchange, another member attributed the trend of disparity between contributions and payments to the benefit-expanding changes made by the legislature in the 1990s, when pension funds around the country were yielding unprecedentedly high returns. The member characterized the program as, nonetheless, solid compared with those of other states and acknowledged the difficulty in making large-scale returns in this market environment.

Mr. Propst reported the PERA's funded ratio increased slightly from the previous fiscal year. He stated that: 1) like with the ERB, in recent years, the amounts in benefits paid out by the PERA have exceeded the amounts it received in contributions; 2) long-term projections suggest that the funded ratio will not exceed, but will grow close to, 100%; 3) the PERA recently reduced its interest rate assumption for the next few years; and 4) he believes the PERA is headed in right direction. A member expressed a desire to avoid pension insolvency like Detroit is experiencing in its pension program, and another member pointed out that the two situations are not a fair comparison, since, in the case of Detroit, money was embezzled.

A member expressed concern about not knowing how the pension programs' projections and assumptions are made. Ms. Goodwin explained that: 1) actuaries apply their expertise to formulate and validate the assumptions, which include projections of future inflation and longevity; 2) the actuaries are professionals whose work must meet high standards; 3) future inflation assumptions drive other numbers, like wages and investment earnings; 4) all ERB assumptions are long-term (i.e., 50 to 100 years in the future) assumptions; 5) the ERB regularly monitors circumstances to detect trends; 6) the ERB does not frequently (i.e., each year or two) change its assumptions because short-term changes do not constitute trends; 7) rather, assumptions are updated when trends become apparent; and 8) the ERB can present further on the topic if the committee wishes. Mr. Propst, likewise, said that the PERA also regularly evaluates its assumptions — some, each year, and some, periodically. He added that staff and consultants establish investment return assumptions.

A member proposed that the agencies send to each of their members periodic statements that report the member's projected benefits payable upon retirement, similar to those mailed by the United States Social Security Administration. Ms. Goodwin noted that the ERB already sends personalized letters each year to its members with service-credit updates and noted that the ERB website features a benefits calculator. The member requested that the ERB add to those

letters personalized information on the plan members' retirement eligibility and projected benefits. Ms. Goodwin stated that such action did not require the permission of the ERB board but, rather, might present software-related challenges. Mr. Propst indicated that the PERA also mails letters like those sent by the ERB and that it reports the PERA-funded ratio in its annual letter to active members.

A member commented that the purpose of distributing information on fund solvency should be to inform members of changes in each of the program's funded ratio and, thus, the possibility that members cannot necessarily rely entirely on their state pension income in their retirements. Toward that end, the member added, the reporting should explain the difference between the funds' target and actual performances and present information as simply as possible.

***Nature of pension programs as defined benefit plans.*** Mr. Propst explained that the ERB and PERA are defined benefit, not defined contribution, plans. Pension benefit amounts are calculated using a formula based in part on service credit and are paid regardless of the state of the economy or the earnings on fund investments. The state would have to cease to exist for it to not pay those benefits.

#### **Update from the State Investment Council (SIC) on the Status of Legal Claims**

Steven K. Moise, state investment officer, SIC, provided background and an update on the SIC's legal claims and recovery efforts related to money lost from investments that had been entered into under improper "pay-to-play" terms. He began by expressing gratitude to the following entities and individuals for their support over the last few years in helping the SIC in its efforts: the SIC; the governor; Senator Munoz, who sponsored legislation to allow the SIC to hire a law firm on a contingency-fee basis; previous interim IPOC members; Attorney General (AG) Hector H. Balderas; Sean Cunniff, assistant attorney general; the Day Pitney law firm; Evan Land, general counsel, SIC; Bruce Brown, deputy general counsel, SIC; and Charles Wollmann, director of communications and legislative affairs, SIC. Mr. Moise also reported the Tobacco Settlement Permanent Fund balance and the combined balance of the SIC-managed permanent funds.

***Background of the "pay-to-play" scheme.*** Mr. Moise and Mr. Land reported the following. When the SIC learned in 2009 that the United States Securities and Exchange Commission (SEC) was investigating an SIC private equity advisor's involvement in a pay-to-play scheme in New York and New Mexico, the SIC began its efforts to redress the misuse of state money. Specifically, the SIC: terminated that advisor, Saul Meyer, in 2009, shortly before he was arrested in New York; reported on the situation to the IPOC and the Legislative Finance Committee; retained the Paul Hastings law firm to respond on the SIC's behalf to federal investigators; voted no-confidence in Gary Bland, the state investment officer at the time who subsequently resigned; hired the Day Pitney law firm using a competitive-bid process and under a negotiated contingency-fee agreement; and sued 17 individuals and entities for breach of fiduciary duty and unjust enrichment in June 2011. Despite Mr. Meyer's having pleaded guilty to corruption in New York, and for reasons unknown to the SIC, the United States attorney, the

SEC and then-AG Gary King declined to pursue criminal and civil charges in connection with the scheme.

**Recovery summary.** So far, the SIC has recovered \$37.1 million, some of which has been deposited in SIC accounts and some of which is in escrow, from a host of individuals and funds. An enumeration of those amounts is on page four of the presentation handout. The largest settlement amount is \$24.25 million from Vanderbilt. That money is in escrow because of the separate legal claims pursued by a *qui tam* plaintiff in the matter. The SIC is trying to get the money released so that it can be invested and generate earnings for the permanent funds.

The SIC settlements include non-disparagement clauses. They also include clauses providing that, if the defendant party fails to testify truthfully at the November 2017 trial in the case against Mr. Bland, the settlement is retracted and the SIC may continue to pursue its claims.

**Case summaries.** The SIC is engaged in discovery and depositions in preparation for the *Bland* trial. Meanwhile, after having moved to France, Anthony Correra, a defendant in the case, filed for bankruptcy in Texas. At first, the filing led to a stay in the *Bland* case, but the stay was lifted in May. The bankruptcy filing will most likely result in the release of information, such as transfers from Mr. Correra's accounts, helpful to the SIC's case.

Elsewhere, a four-day hearing that revealed a considerable amount of evidence was held in April in the *qui tam* case filed under the Fraud Against Taxpayers Act (FATA) by Frank Foy. To allow the state to pursue its case unhindered, the AG is seeking to dismiss Mr. Foy's claims. The AG is also seeking final court approval of the Vanderbilt settlement and a release of the cash in escrow. A ruling by Judge Louis P. McDonald on these issues is expected in the coming weeks.

In another case, that in which Mr. Foy and Victor Marshall sued the Day Pitney law firm alleging that the firm had a conflict of interest that precludes it from representing the SIC, the AG has filed a motion to dismiss on several grounds. The case is stayed, pending Judge McDonald's rulings.

The state's appellate courts have repeatedly rejected Mr. Foy's petitions for certiorari in which Mr. Foy wanted to challenge other courts' approvals of SIC settlements. In July, the New Mexico Supreme Court rejected Mr. Foy's petition for superintending control that would have prevented the district court from issuing the decision now expected from Judge McDonald.

**Conclusion.** The SIC believes it is on the right track in recovering money owed to the funds. It has negotiated a comparatively low 20% contingency fee for legal representation. It believes that the *qui tam* plaintiff does not deserve a share of the SIC's recoveries and has not contributed value in securing those recoveries. Further, the SIC believes that the AG's efforts to remove the *qui tam* plaintiff are not political, as supported by the fact that both the AG and governor, who belong to different political parties, favor that removal and hold the position that

the SIC should pursue its claims unhindered. The SIC is eager to complete its pursuits to recover money lost in connection with the "pay-to-play" scheme so that it can focus exclusively on growing the permanent funds.

### Questions and Discussion

On questioning, the committee, Mr. Moise and Mr. Land addressed the following topics.

In response to a member's questions, Mr. Land indicated that the SIC has yet to settle with five defendants, who have been served with legal process, and who are therefore under the subpoena power of the court. He explained that, if the lawsuit resulted in a bench trial, the state would have to prove liability in a particular amount. Once that liability has been proven, he said, the state could begin the process of asset discovery, a process made easier because of Mr. Correr's bankruptcy filing: any money traceable and within the power of the bankruptcy court to collect could be directed toward payment on a judgment in the SIC's favor.

In response to a member's question, Mr. Moise estimated that Mr. Marshall's portion of payment on the SIC's recoveries could range from 0% to 30%. He argued that Mr. Marshall did not help realize those recoveries and noted that Mr. Marshall seeks more in compensation than does the SIC's law firm, which has contributed many hours of uncompensated work. Mr. Land explained the provisions of the FATA that pertain to compensation for a relator who brings a lawsuit under the act and noted that Mr. Foy has testified to facts that would preclude him from collecting anything; Mr. Land further noted that the AG will argue that the full recovery should be deposited in the permanent funds for their beneficiaries' enrichment.

### **Subcommittee**

Senator Munoz announced plans to form an IPOC subcommittee to further explore the topic of potential state action in the area of a private sector retirement program.

### **Adjournment**

There being no further business before the committee, the committee adjourned at 4:25 p.m.

Revised: October 28, 2016

**TENTATIVE AGENDA  
for the  
FOURTH MEETING IN 2016  
of the  
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**October 31–November 1, 2016  
Room 322, State Capitol  
Santa Fe**

**Monday, October 31**

- 9:00 a.m.           **Call to Order and Welcome**  
—Senator George K. Munoz, Chair  
—Representative Monica Youngblood, Vice Chair
- 9:05 a.m.       (1)   **Considerations for Public Action on Private Sector Retirement Savings Initiatives**  
—Angela Antonelli, Executive Director, Center for Retirement Initiatives, McCourt School of Public Policy, Georgetown University  
—Gerri Madrid-Davis, Director, Financial Security and Consumer Affairs, State Advocacy and Strategic Integration, Government Affairs, AARP
- 12:10 p.m.       **Approval of Minutes**
- 12:15 p.m.       **Lunch Break**
- 1:30 p.m.       (2)   **Report on Private Sector Retirement Savings Marketplace Concepts**  
—Leann Kravitz, Senior Director, Public Affairs, Government Relations and Public Policy, Fidelity Investments  
—Steven Trujillo, Managing Director, Northwestern Mutual  
—Jason A. Espinoza, President, Chief Executive Officer, New Mexico Association of Commerce and Industry
- 2:15 p.m.       (3)   **Proposed Legislation from the Public Employees Retirement Association (PERA)**  
—Wayne Propst, Executive Director, PERA  
—Susan Pittard, General Counsel, PERA  
—Karyn Lujan, Deferred Compensation Plan Manager, PERA
- 2:50 p.m.       (4)   **Proposed Legislation from the Educational Retirement Board (ERB)**  
—Jan Goodwin, Executive Director, ERB

- 3:25 p.m. (5) [Potential Legislation — Municipal Post-Employment Benefit Trust](#)  
—Lou Hoffman, Director, Finance and Administrative Services Department,  
City of Albuquerque
- 4:00 p.m. (6) [Report from the New Mexico Retiree Health Care Authority  
\(NMRHCA\)](#)  
—Mark Tyndall, Executive Director, NMRHCA
- 5:00 p.m. **Recess**

**Tuesday, November 1**

- 9:00 a.m. (7) [Update on Compliance with Governmental Accounting Standards  
Board Statement 67](#)  
—Natalie Cordova, Chief Financial Officer, PERA
- 9:30 a.m. (8) [Update on Compliance with Governmental Accounting Standards  
Board Statement 68](#)  
—Jan Goodwin, Executive Director, ERB
- 10:00 a.m. (9) [Public Pension Solvency:](#)
- [Actuarial Reports on Unfunded Liabilities](#)
  - [Market Value of Pension Obligations](#)
  - [Possible Measures to Safeguard the Solvency of Pension Plans](#)
- Wayne Propst, Executive Director, PERA  
—Jan Goodwin, Executive Director, ERB
- 11:45 a.m. (10) [Improving Transparency in the Financial Reports Sent to Members](#)  
—Wayne Propst, Executive Director, PERA  
—Jan Goodwin, Executive Director, ERB
- 12:30 p.m. **Adjourn**



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

**October 31-November 1, 2016  
Room 322, State Capitol  
Santa Fe**

The fourth meeting of the Investments and Pensions Oversight Committee (IPOC) was called to order by Senator George K. Munoz, chair, on October 31, 2016 at 9:23 a.m. in Room 322 of the State Capitol.

**Present**

Sen. George K. Munoz, Chair (10/31)  
Rep. Monica Youngblood, Vice Chair  
Sen. Pete Campos  
Sen. Jacob R. Candelaria (10/31)  
Rep. Miguel P. Garcia  
Rep. Larry A. Larrañaga  
Sen. Bill B. O'Neill  
Rep. Jim R. Trujillo  
Rep. Luciano "Lucky" Varela  
Sen. James P. White

**Absent**

Sen. Carroll H. Leavell  
Sen. Steven P. Neville  
Rep. Jane E. Powdrell-Culbert  
Rep. William "Bill" R. Rehm

**Advisory Members**

Sen. Ted Barela (10/31)  
Rep. Roberto "Bobby" J. Gonzales (11/1)  
Sen. Stuart Ingle (10/31)  
Rep. Tomás E. Salazar  
Rep. James E. Smith  
Rep. Sheryl Williams Stapleton

Sen. Carlos R. Cisneros  
Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papen  
Sen. William H. Payne  
Sen. Michael S. Sanchez

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Lisa Sullivan, Staff Attorney, Legislative Council Service (LCS)  
Ric Gaudet, Researcher, LCS  
Diego Jimenez, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and other written testimony are in the meeting file.

## **Monday, October 31**

### **Considerations for Public Action on Private Sector Retirement Savings Initiatives**

Gerri Madrid-Davis, director, Financial Security and Consumer Affairs, State Advocacy and Strategic Integration, Government Affairs, AARP; and Angela Antonelli, executive director, Center for Retirement Initiatives, McCourt School of Public Policy, Georgetown University, presented research findings and policy options to increase retirement savings in the private sector. Ms. Madrid-Davis began by discussing New Mexico's longevity economy, defined as the sum of all economic activity that is supported by the consumer spending of households headed by a person age 50 or older. The total economic contribution of the longevity economy, at \$32 billion in 2013, accounted for 35 percent of New Mexico's gross domestic product. It also accounted for 45 percent of the jobs in the state, 38 percent of employee compensation and 48 percent of state and local tax revenues. Sixty-one percent of New Mexicans age 50 and above are employed, compared to 72 percent for the 25 to 49 age group. Currently, 34 percent of the state's population is over 50 years of age, and that percentage is expected to grow to 40 percent by 2040.

Ms. Madrid-Davis discussed the National Institute on Retirement Security's recent State Financial Security Scorecards, which rank each of the 50 states in three sources of potential economic pressures for future retirees. The scorecards are measured by evaluating potential retirement income, major retiree costs and labor market conditions for older workers. In relation to other states, New Mexico scored worse than average for potential economic pressures facing future retirees. About 20 percent of the state's residents are currently receiving supplemental security income (SSI) from the Social Security Administration, with an average monthly distribution of \$1,160. This is the only income received for about one-third of these recipients. More than 60 percent of the state's private sector workers do not have access to a retirement plan, and more than 50 percent of workers nearing retirement age are not covered by a plan. Sixty-eight percent of Hispanics in the state are not covered by a retirement plan. There is also a sizeable retirement savings gap when education, gender and income are analyzed.

Ms. Madrid-Davis discussed the contingent workforce, which is the workforce in which there is not a traditional employer-employee relationship. This workforce made up about 16 percent of the total workforce in 2015. These workers are more likely to be young, uneducated, low income, female or Hispanic and are more likely to work only part time or hold multiple jobs. They also tend to lack access to employer-sponsored retirement plans. They could contribute money to an individual retirement account (IRA), but most do not. There are potential solutions to the lack of retirement savings for the contingent workforce, including automatic IRAs, multiple employer plans (MEPs) and a new federally sponsored plan called MyRA. The state could also implement employer-facilitated retirement savings plans, making them portable and universal.

Ms. Antonelli discussed with the committee state initiatives undertaken across the country to close the retirement savings gap for private sector workers. States are beginning to take action because more than one-half of private sector workers nationwide do not have any retirement savings plans, and SSI benefits do not cover basic living expenses. There will be long-term negative economic and budgetary consequences for state governments if this situation is allowed to continue.

Momentum for private sector retirement savings is growing across the country, and the movement in general is bipartisan. Since 2012, more than 30 states have considered private sector retirement initiatives, and eight states have enacted legislation.

Early on, states needed clarification on how their efforts would be compatible with the requirements of the federal Employee Retirement Income Security Act of 1974 (ERISA). In 2015, the president directed the federal Department of Labor (DOL) to issue rules to provide a path for states to create retirement savings programs. Final rules were issued a year later establishing a new "safe harbor" for states to implement mandatory automatic enrollment in IRAs that would be exempt from ERISA requirements. The department also issued an interpretive bulletin clarifying that states can implement MEPs, a defined contribution 401(k) prototype plan for certain classes of employers and a state-run marketplace system in which companies can be vetted to offer retirement savings plans to employees. These programs would be covered by ERISA.

One type of public initiative for private sector retirement savings is an auto-IRA plan. Auto-IRA plans would require employers to offer employees a state-run IRA plan. The plans would automatically enroll employees unless they opted out and would provide a default contribution. The contributions would be pooled and managed by professional funds, with fees kept at or below one percent. A drawback to the auto-IRA plans is that, since these plans are exempt from ERISA, employer contributions to the IRA would not be permitted.

Another type of public initiative for private sector retirement savings is a marketplace plan. Marketplace plans would consist of a state-run marketplace that contains pre-selected commercial low-fee retirement savings plans for employers to choose from. Employer contributions could be encouraged, since this model falls within the scope of ERISA. A drawback to the marketplace plans is that the costs for establishing the marketplace would be mostly borne by the private sector.

Ms. Antonelli discussed key plan design considerations for states to ponder when implementing retirement savings plans, including:

- choosing between voluntary or mandatory participation by employers;
- defining the role and responsibilities of the state and of employers;
- determining the types of employers and workers covered by the program;
- determining the types of products to be offered;

- setting default, minimum and maximum contribution levels;
- whether to auto-enroll employees and to auto-escalate contribution levels;
- whether to use tax or other incentives to encourage participation in the program;
- providing for initial funding of the program;
- providing for program administration;
- providing for marketing, outreach and education;
- determining rules to regulate withdrawal from the program and for portability; and
- whether to provide for annuitization of retirement income.

Ms. Madrid-Davis discussed in detail the alternative public initiatives for retirement savings for private sector workers: the marketplace approach and the auto-IRA approach. The marketplace model provides more flexibility for employers to choose a plan that best fits their needs and allows for an "apples-to-apples" comparison of plans being offered. Only those plans that meet the criteria set by the agency overseeing the program would be offered in the marketplace. Drawbacks of the marketplace model include more up-front work required of the employer in choosing and implementing a retirement savings plan to offer to its employees. In addition, the employer could, in some circumstances, be required to act as a fiduciary for its employees' retirement account. Under the auto-IRA model, an employer could either choose a retirement savings plan for its employees and operate it on its own or use the state-run plan. That plan would automatically enroll employees at a default contribution rate, unless they opt out. While the marketplace model has been discussed by some opponents of the auto-IRA model as being less regulatory on businesses, Ms. Madrid-Davis said that the auto-IRA model creates a very simple process for employers to sign up and maintain. The marketplace model would still require employers to choose a plan, choose a provider, hire lawyers and third party administrators and potentially operate under ERISA and make contributions on behalf of employees. She said that the marketplace model does little to minimize the administrative burden on employers.

Questions and comments from committee members included the following.

- Since states have begun implementing auto-IRA or marketplace programs, how much has participation increased in retirement savings plans? Ms. Antonelli said that no state has yet implemented a program, but the first program is set to begin in 2017. She said that a California feasibility study of the auto-IRA plan showed that even if only 25 percent of the projected number of workers in the plan enrolled, the program would still be viable financially.

- How many auto-IRA states allow for employer contributions for the employees? Ms. Antonelli said that since auto-IRA plans are not part of ERISA, employer contributions are not allowed. However, all states that have enacted auto-IRA legislation allow for employers to participate in other ERISA-covered plans. Employers are required to have a retirement savings plan, whether auto-IRA or some other type of plan.

- How can states ensure that the self-employed workforce, which is expected soon to be one-third of the entire workforce, be covered by a retirement savings plan? Ms. Madrid-Davis

said that contingent workers cannot be covered by an employer plan. There are many logistical and legal obstacles to ensuring that self-employed workers enroll in a plan. States are currently considering how to increase participation by that workforce segment.

- What protections for employees will be provided if a state enacts ERISA-exempt auto-IRA legislation? Ms. Antonelli said that the auto-IRA safe harbor rule requires that those programs be in the context of a state-run plan, which most likely would include similar protections that ERISA has.

- What steps should New Mexico take next to increase participation in private sector retirement plans? Ms. Antonelli said that the experience the state had in setting up educational savings plans could be helpful in setting up a system for retirement savings plans. The same arguments currently being made against a state plan for private sector retirement savings plans were also made against setting up educational savings plans two decades ago.

- Is the DOL considering allowing large cities and counties to adopt their own retirement savings programs? Ms. Antonelli said that the DOL will release its rule for local governments soon. However, she said that any state laws would be allowed to preempt local government plans.

- There is no guarantee that the second safe harbor created by the DOL for auto-IRA programs will withstand court challenges. In addition, start-up costs for these programs could be much higher than the \$1.5 million to \$2 million estimates provided to the committee. A fiscal impact report for the California auto-IRA program estimated start-up costs to reach as high as \$134 million. Ms. Antonelli said that the lower estimate is the average cost to implement auto-IRA programs thus far, and that each program could recoup its start-up costs over time.

- Mandating auto-enrollment of workers in a retirement savings plan would be an unprecedented extension of government power in New Mexico; the marketplace approach is a much less intrusive program than the auto-IRA approach.

### **Approval of Minutes**

The minutes from the August 29, 2016 meeting of the IPOC were approved by the committee.

### **Report on Private Sector Retirement Savings Marketplace Concepts**

The committee heard a panel presentation about the benefits of the marketplace approach to retirement savings plans and the drawbacks of the auto-IRA approach. The panel included Leann Kravitz, senior director, public affairs, government relations and public policy, Fidelity Investments; Steven Trujillo, managing director, Northwestern Mutual; Jason A. Espinoza, president and chief executive officer, New Mexico Association of Commerce and Industry; and John Mangan, regional vice president, state relations, American Council of Life Insurers (ACLI). Ms. Kravitz said that there are already a multitude of low-cost retirement plans available for

employers and employees, and the newly implemented federal MyRA program is a no-cost, no fees payroll deduction program that accomplishes most of what an auto-IRA program would do. State-run auto-IRA plans would be very costly to implement and administer, and would encourage employers to leave existing retirement plans in favor of the weaker state plans, according to Ms. Kravitz. The panelists prefer a public-private partnership approach to solving the problem of inadequate retirement savings in the private sector, such as marketplace programs.

Mr. Trujillo said that Northwestern Mutual agrees that there is a big retirement savings gap, but that accessibility to plans is not the main issue. There is plenty of outreach being done on a daily basis by his and other companies to potential clients. He suggested that any plan implemented should include a component that regulates distributions to retirees; otherwise, the state may find itself liable to private sector retirees who did not save enough money for their retirement.

Mr. Espinoza said that the regulatory environment for businesses, especially employer mandates, is a big problem in the state. Mandating employers to enroll employees in a retirement savings plan is a foolish idea, especially since there are many options that currently exist, and since the marketplace approach provides a simple, low-cost solution that does not further regulate businesses, according to Mr. Espinoza.

Questions and comments from committee members included the following.

- Have investment firms been active in other states that are considering retirement savings plans? Ms. Kravitz said that Fidelity Investments has been engaged with policymakers in every state that is considering plans. The company provides model legislation for the marketplace approach and also provides advice in implementing those programs. Mr. Mangan said that the ACLI supports the expansion of MEPs. Currently, there are legal barriers that restrict a MEP to businesses in the same industry. He commented that state-run plans operating outside of ERISA may be subject to new fiduciary requirements.

- The private sector is innovative, but state bureaucracies are not. A marketplace program that vets retirement savings plans for employers to choose is a very simple and cheap option.

- How would a marketplace program be paid for? Ms. Kravitz said that vendors could pay a fee to the state to offset educational outreach efforts. Mr. Mangan said that the ACLI is willing to pay for a portion of the cost of setting up a marketplace program.

- The state could create a marketplace program, in cooperation with the private sector, without any legislation being enacted.

### **Proposed Legislation from the Public Employees Retirement Association (PERA)**

Karyn Lujan, deferred compensation plan manager, PERA, presented proposed legislation that would make changes to the deferred compensation plan offered by the PERA to public employees. Language changes mostly reflect the current practices of the PERA and are not substantive. In addition, the bill draft would allow for a public employee to sign up for the deferred compensation plan electronically, which will make the enrollment process much simpler.

Greg Trujillo, deputy director, PERA, presented another piece of proposed legislation that would change the payment and accounting process for payments made to the Educational Retirement Board (ERB) for retirees who have service credit from the PERA but are receiving pension benefits from the ERB. This contains mostly technical changes, will make accounting for these payments simpler and will reduce confusion currently encountered by retired members about the payments.

### **Proposed Legislation from the ERB**

Jan Goodwin, executive director, ERB, presented two pieces of proposed legislation for the committee's consideration. The first bill draft makes many technical and clarification changes to ERB statutes; puts into statute current best practices for using a medical authority to establish disability status for members; and clarifies language regarding provisional members. No substantive changes are proposed in this bill draft, said Ms. Goodwin.

The second bill proposed by the ERB would exempt certain investment positions from the Personnel Act. The ERB manages some investments in-house, and the state personnel plan's restrictive salary structures for investment managers makes it impossible for the ERB to hire and retain the most qualified persons for those positions, according to Ms. Goodwin.

Questions and comments from committee members included the following.

- How much would passage of the salary exemption legislation cost? Ms. Goodwin said that the changes would increase the cost by \$335,000.
- Why does the ERB need this exemption from the state personnel plan, and the PERA apparently does not need it? Ms. Goodwin said that the ERB manages some of its investments, at a cost savings to its members of millions of dollars annually. The PERA manages all of its investments externally.
- Ms. Goodwin was asked to provide the committee with supporting documentation for the personnel legislation, including a cost-benefit analysis.
- The ERB, PERA and State Investment Council are paying huge fees to out-of-state companies to manage their investments. It would be more prudent for those agencies to hire the most qualified people to manage some investments in-house.

### **Potential Legislation—Municipal Post-Employment Benefits Trust**

Lou Hoffman, director, Finance and Administrative Services Department, City of Albuquerque, and Tom Horan, lobbyist, City of Albuquerque, presented proposed legislation for the committee's consideration about municipal post-employment benefits trusts. Mr. Horan said that Albuquerque has for many decades provided its employees with life insurance benefits during employment and after retirement. Recent accounting requirements imposed by the Governmental Accounting Standards Board (GASB) forced the city to set up a trust fund to pay for these post-employment benefits. The proposed legislation sets up parameters and investment options for a municipality to set up such a trust fund. Identical or very similar legislation has been endorsed by the IPOC in the past two years, but the legislation thus far has not been enacted into law. Mr. Hoffman said that the legislation will save the city \$15 million in present value terms over the next several decades by allowing the fund to be invested in a wide variety of investment instruments, rather than the current, limited investment options provided by Section 6-10-10 NMSA 1978.

Questions and comments from committee members included the following.

- How much does the City of Albuquerque spend each year on its life insurance program for employees and retirees? Mr. Hoffman said that the city budgets between \$3 million and \$4 million annually for life insurance benefits.

### **Report from the New Mexico Retiree Health Care Authority (NMRHCA)**

Mark Tyndall, executive director, NMRHCA, presented to the committee a report on the recent activities and status of the retiree health care program. The authority was created in 1990 and began paying full benefits to more than 16,000 retirees in 1991. It currently has approximately 100,000 active employees from more than 300 state, educational and local governments and nearly 61,000 covered retirees and eligible dependents. The Retiree Health Care Fund currently has \$483.9 million in its long-term investment account. The authority's fiscal year (FY) 2017 operating budget calls for \$309.9 million in health care expenditures and \$3.1 million in operating expenses. Income sources were budgeted for the fiscal year, prior to the reductions made in the recent special session of the legislature, totaling \$312.8 million. The authority offers several health care insurance programs, including Medicare supplemental plans, pre-Medicare plans, dental plans, vision plans and life insurance plans.

In 2012, the board of directors of the authority adopted a five-year strategic plan to ensure the solvency of the fund and program. It has been implementing the plan for the past four years, which has increased the solvency of the fund to 20 years, up from 2007's solvency projection of just seven years. However, the legislature has yet to enact the key component of the solvency plan — increasing employer and employee contributions. In 2017, the board of directors took several steps to further improve on the solvency of the program, including:

- elimination of the costly Premier Plus plan and moving those members enrolled to the Premier PPO plan;



- creation of the Value HMO plan;
- introduction of value-based incentives;
- adjustment of rates commensurate with new risk pools;
- beginning to default eligible members to the most appropriate Medicare Advantage plan;
- elimination of subsidies for over-the-counter drugs;
- elimination of multiple dependent subsidies; and
- implementation and enforcement of open enrollment periods.

The retiree health care program is currently 11 percent funded, with an unfunded liability of \$3.8 billion. This unfunded liability was \$4.2 billion prior to the board's solvency measures. During the recent special session, a \$3 million distribution to the fund was repealed, and a separate increase in distributions to the fund was temporarily delayed. These changes reduced the solvency period for the fund by three to four years.

The GASB imposed accounting standards that the NMRHCA will begin complying with in FY 2017. GASB Statement 74: Financial Reporting for Postemployment Benefits Other Than Pension Plans imposes similar accounting requirements to standards that the PERA and ERB already are complying with regarding pension plans, and GASB 75: Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions imposes reporting requirements on local governments to report their share of the unfunded liability from the retiree health care program. The new standards have just taken effect this fiscal year. The biggest impact on the reported unfunded liability of the program is that the NMRHCA will have to use a much lower discount rate in calculating its net pension liability (NPL).

Questions and comments from committee members included the following.

- Does the NMRHCA offer any "Cadillac" plans, which would be subject to a federal tax because they are too generous? Mr. Tyndall said that the recently discontinued Premier Plus plan would have been subject to that tax. He said that the board is committed to not offering any plans that would be subject to the tax. However, there is a problem with the way that Cadillac plans are calculated, because the cost of the plans is indexed to the regular consumer price index, and not to health care cost increases. Over time, many current plans currently not considered Cadillac plans may fall into that category.

- Do the recent premium price hikes being offered through health insurance exchanges have any impact on the retiree health care plans? Mr. Tyndall said that the NMRHCA is self-funded, and those premium increases have no impact on the program.

The committee recessed at 4:29 p.m.

## **Tuesday, November 1**

The committee was reconvened on Tuesday, November 1, at 9:08 a.m. by Representative Youngblood.

### **Update on GASB Statement 67**

Natalie Cordova, chief financial officer, PERA, made a presentation to the committee about PERA's reporting under GASB Statement 67, which provides for new standards for financial reporting on pension plans. The GASB changes were intended to promote consistency and transparency of employer reporting. Coupled with GASB Statement 68, which provides standards for governments to report their share of pension liabilities, the new standards will provide more transparency on government financial reports by reporting the long-term benefit obligations and the long-term financial health of governmental entities. GASB Statements 67 and 68 provide for the separation of accounting and funding and moves the NPL to the balance sheet of government employers, rather than a footnote. NPL is calculated by determining the total pension liability (TPL) and subtracting the pension plan's fiduciary net position. The calculation of TPL is a three-step process:

- the total future pension costs for current and former employees is calculated, based on the terms of the plan and on dozens of standardized actuarial assumptions, such as length of expected service, salary projections and life expectancy after retirement;
- projected benefit payments are discounted to their present value; and
- those present value projections are then attributed to the periods when they will be earned by retirees.

This calculation is separate from actuarial valuations used to make funding decisions, and is exclusively used for accounting purposes, to get an accurate picture of actual liabilities. The PERA's TPL for the previous fiscal year was \$20 billion, and its net position was \$13.8 billion. This results in an NPL of \$6.2 billion, which figure is then used to calculate the unfunded liability for each government employer participating in the plan. Ms. Cordova noted that the market value of assets used in the calculation of NPL is different from, and more volatile than, the traditional method pension plans use to calculate their unfunded actuarial accrued liability (UAAL). UAAL is calculated using a four-year smoothing of asset values, while GASB 67 requires a calculation to be a snapshot in time. Fluctuations in the fair market value of a pension plan's assets can have great impacts on the plan's NPL from year to year.

Each year, the PERA calculates its NPL and then calculates each employer allocation of that NPL. These employer allocations are distributed to each government employer, along with information needed to assist employers in completing their balance sheets pursuant to GASB Statement 68 requirements. FY 2016 schedules are anticipated to be available in early 2017, which will be used to complete FY 2017 audits later that year.

Questions and comments from committee members included the following.

- Some governments in other states have gone bankrupt because their pension plans were severely underfunded. What would happen if the PERA funding level were to get to those levels? Ms. Cordova said that the PERA is continually monitoring its investments and funding status, and can react quickly if changes need to be made. Wayne Propst, executive director, PERA, said that in Detroit, pensions were reduced by an average of 18 percent after that city declared bankruptcy, and that this would be theoretically possible in New Mexico. However, the Constitution of New Mexico provides protections for retirees and employees covered by the PERA and the ERB. In 2013, the legislature enacted comprehensive reform of both plans to ensure the financial integrity of the pension plans and can make more changes if needed in the future.

- GASB Statement 68 will probably have more impacts on local governments because their financial statements will be affected by their share of NPL. In addition, local governments will be required to perform more accounting work to comply with the standards. Ms. Cordova estimated that local governments would see a five percent increase in accounting costs. The PERA has made it very easy for local governments to comply with the new standards.

- Does the reduction in the number of state and local employees have a negative impact on the PERA's NPL? Ms. Cordova said that fewer public employees means less money contributed to the fund, which over time could have an impact on the NPL.

### **Update on GASB Statement 68**

Ms. Goodwin presented to the committee an update on how the ERB is assisting its government employers in complying with GASB Statement 68, which requires governmental entities to report their share of a pension plan's NPL on their individual balance sheets. One of the biggest worries about the new standards was that those liabilities would negatively affect credit ratings of governments, which in turn would increase bond issuance expenses. However, Ms. Goodwin reported that although some governments may show a negative balance in their audits, that is not necessarily a sign of financial distress. Much more important is cash flow, which is not affected by the new GASB standards. The rating agency Standard & Poor's Financial Services LLC reported in 2015 that it does not expect any significant credit differentiation based solely on the new reporting requirements.

Government employers began reporting under the new standard in FY 2016, using FY 2015 data. The GASB allows for the use of the previous year's pension financial statements in

order to provide enough time for NPL to be calculated and for governmental audits to be filed timely. New information that government employers began reporting include:

- a description of the pension plan and the benefits provided;
- a listing of the significant assumptions used in the calculation of NPL and any changes made in those assumptions;
- each governmental employer's portion of the NPL and a report of that year's deferred outflows and inflows related to the pension;
- an analysis of the NPL's sensitivity to changes in the discount rate; and
- a 10-year supplementary report.

Ms. Goodwin said that the NPL and deferrals are cumulative balances on a governmental employer's balance sheet and represent a snapshot at a particular time. She pointed out, however, that the requirements do not create a new liability or obligation or change what government employers are required to contribute.

The ERB decided to provide its participating employers with all of the information needed to comply with GASB Statement 68. The ERB prepares a schedule of allocations for all employers, including journal entry elements and all required disclosures. Each participating employer's allocation of NPL is calculated by dividing each employer's contributions by the total amount contributed. This information reduces the work needed for employers in preparing their audits. The ERB continually provides outreach and training to its participating employers and auditors. The ERB has committed to be in compliance with the American Institute of Certified Public Accountants' best practices, which will ensure that a participating employer's auditor can rely on the ERB's schedule of allocations as being correct. However, employers still have the responsibility to correctly report census data to the ERB, as well as correctly reporting the information provided by the ERB.

The ERB reported a NPL for FY 2015 of \$6.48 billion. Deferred outflows totaled \$583 million, deferred inflows totaled \$509 million and the pension plan expense for the year was \$489 million.

Questions and comments from committee members included the following.

- How does the recent downgrade of the state's credit rating affect the ERB? Ms. Goodwin said that the main reason given for the rating change was the downturn in the state's revenues. The status of the state's pension plans was not mentioned.

- How does the ERB conduct training, especially for small, rural school districts? Ms. Goodwin said that ERB staff had a series of meetings across the state, with detailed training of how to comply with the new standard. Some trainings were also videotaped and are now available on the ERB's website.

- Why does a decrease in the discount rate significantly increase the NPL? Ms. Goodwin said that compounded interest has a profound impact on NPL, which is a long-term liability calculation. NPL is very sensitive to changes in the discount rate. This is why the ERB evaluates its expected return on investment every two years.

### **Public Pension Solvency: Actuarial Reports on Unfunded Liability; Market Value of Pension Obligations; Possible Measures to Safeguard the Solvency of Pension Plans**

Mr. Propst and Ms. Goodwin presented to the committee their agencies' actuarial valuation reports. Mr. Propst began with the PERA report. He said that in July, the PERA adopted a new expected investment rate of return of 7.25 percent, down from the previous 7.75 percent. There was a modest increase in the overall solvency of the plan in the past fiscal year, from 74.9 percent to 75.3 percent. The UAAL increased by \$108 million, primarily due to changes in assumptions. The current statutory rates are expected to fully amortize the UAAL in 56 years. The PERA fund performed poorly in the past fiscal year, returning only .49 percent, compared to the more than 17 percent return the previous year. On June 30, the PERA fund balance was approximately \$14.1 billion. In FY 2016, benefit payments of \$1.04 billion were paid to retirees.

Ms. Goodwin then presented the ERB's actuarial valuation for 2016. The actuarial funded ratio of the ERB improved from the previous fiscal year from 63.7 percent to 64.2 percent. The UAAL increased by approximately \$100 million, totaling \$6.6 billion. The funding period of the plan increased from 43 years to 45 years. The Educational Retirement Fund returned 2.8 percent in FY 2016. Active membership decreased 1.5 percent, to 60,057 members, but total payroll of members increased slightly, to \$2.612 billion. The number of retirees increased four percent, to 45,797, with an annual average retirement benefit of \$21,976. The fund's value increased slightly, with a balance on June 30 of \$11.49 billion. The ERB distributed \$1.022 billion in FY 2016.

Questions and comments from committee members included the following.

- Why was there a decrease in the number of active ERB members? Ms. Goodwin said that the decrease was partially due to retirements and a change in jobs, but part of the decrease can be attributed to a decline in hiring.

- Why has the ERB kept its discount rate at 7.75 percent, when it has not performed at that level for many years? Ms. Goodwin said that the ERB is beginning a new experience study, which will include a thorough review of the expected rate of return on investment. The ERB lowered its discount rate from eight percent to the current rate a few years ago.

- When will the ERB and the PERA pension plans be fully funded? Ms. Goodwin said that the ERB plan is projected to be fully funded in 2061. Mr. Propst said that the PERA public employee plan is expected to be fully amortized in 2069.

### **Improving Transparency in the Financial Reports Sent to Members**

Mr. Propst and Ms. Goodwin discussed with the committee what the ERB and PERA have been doing and plan on doing to improve the transparency of the agencies' activities. Mr. Propst said that the PERA provides a tremendous amount of information to the legislature and other entities, but has not provided very much financial information to its members. He distributed copies of the Colorado PERA's *2015 Summary Annual Financial Report*, which provides a summary of the agency's performance and activities for the past year. Mr. Propst said that the New Mexico PERA is in the process of preparing a similar report for its members, which should be completed by the end of 2016.

Ms. Goodwin discussed the ERB's transparency policy, which the board adopted in June 2016 to formalize practices already occurring. The ERB makes available on its website many detailed reports, including annual actuarial and financial reports; asset allocation and asset liability reviews; board and committee meeting announcements, agendas and minutes; board governance policies; funding policies; investment performance reports; investment policies; and member information. The ERB has endorsed the Institutional Limited Partners Association fee template disclosure, which provides a best-practices approach to disclosing investment fees.

Ms. Goodwin discussed the ERB's publication of its annual *Popular Annual Financial Report* (PAFR), which provides a brief summary of the financial performance and activities of the ERB for the previous year. The ERB has published a PAFR since 2013, and sends it to all active members and retirees. The PAFR contains information on investment performance; actuarial metrics, including the UAAL, funded ratio and funding period; the fiduciary net position over time; demographic information; asset allocations; board member information; retirement benefits by county; and contribution rates.

Questions and comments from committee members included the following.

- Why does the ERB's PAFR include investment returns gross of fees? Ms. Goodwin said that the upcoming PAFR will report those returns net of fees.

### **Adjournment**

There being no further business, the committee adjourned at 11:47 a.m.

Revised: November 16, 2016

**TENTATIVE AGENDA  
for the  
FIFTH MEETING IN 2016  
of the  
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**November 29, 2016  
Room 322, State Capitol  
Santa Fe**

**Tuesday, November 29**

- 9:30 a.m.           **Call to Order and Welcome**  
                          —Senator George K. Munoz, Chair  
                          —Representative Monica Youngblood, Vice Chair
- 9:35 a.m.           (1) **[Request for Endorsement of Potential Legislation — Municipal Post-Employment Benefit Trust](#)**  
                          —Tom Horan, Esq.
- 9:55 a.m.           (2) **[Approval of Minutes](#)**
- 10:00 a.m.          (3) **[Request for Endorsement of Proposed Legislation from the Educational Retirement Board \(ERB\)](#)**  
                          —Jan Goodwin, Executive Director, ERB
- 10:30 a.m.          (4) **[Request for Endorsement of Potential Legislation from the State Treasurer's Office](#)**  
                          —Tim Eichenberg, State Treasurer
- 11:00 a.m.          (5) **[Request for Endorsement of Proposed Legislation from the Public Employees Retirement Association \(PERA\)](#)**  
                          —Wayne Propst, Executive Director, PERA  
                          —Greg Trujillo, Deputy Director, PERA  
                          —Karyn Lujan, Deferred Compensation Plan Manager, PERA
- 11:30 a.m.           **Adjourn**





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

**November 29, 2016  
Room 322, State Capitol  
Santa Fe**

The fifth meeting of the Investments and Pensions Oversight Committee was called to order by Senator George K. Munoz, chair, on November 29, 2016 at 9:37 a.m. in Room 322 of the State Capitol.

**Present**

Sen. George K. Munoz, Chair  
Rep. Monica Youngblood, Vice Chair  
Sen. Pete Campos  
Rep. Miguel P. Garcia  
Rep. Larry A. Larrañaga  
Sen. Bill B. O'Neill  
Rep. Jane E. Powdrell-Culbert  
Rep. Jim R. Trujillo  
Rep. Luciano "Lucky" Varela  
Sen. James P. White

**Absent**

Sen. Jacob R. Candelaria  
Sen. Carroll H. Leavell  
Sen. Steven P. Neville  
Rep. William "Bill" R. Rehm

**Advisory Members**

Sen. Ted Barela  
Rep. Roberto "Bobby" J. Gonzales  
Rep. Tomás E. Salazar  
Rep. Sheryl Williams Stapleton

Sen. Carlos R. Cisneros  
Sen. Stuart Ingle  
Rep. Patricia A. Lundstrom  
Sen. Mary Kay Papen  
Sen. William H. Payne  
Sen. Michael S. Sanchez  
Rep. James E. Smith

**Guest Legislator**

Sen. John Arthur Smith

**Staff**

Lisa Sullivan, Staff Attorney, Legislative Council Service (LCS)  
Tessa Ryan, Staff Attorney, 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.

## **Tuesday, November 29**

### **Request for Endorsement of Legislation — Municipal Post-Employment Benefit Trust**

Tom Horan, Esq., presented the recent draft of a bill that had been presented to and endorsed by the committee in the past (see Senate Bill 168 (2016)). This bill would provide a way for the City of Albuquerque to continue providing post-employment life insurance benefits for its employees and to report the provision of benefits in a way that complies with the Governmental Accounting Standards Board (GASB) statement governing the reporting of unfunded accrued pension liability.

### **Questions and Discussion**

On questioning, the committee and Mr. Horan addressed the following topic.

*Effect of legislation if enacted; program details.* Mr. Horan clarified that the legislation, if enacted, would: 1) allow, not require, municipalities to adopt the program; 2) give municipalities discretion on many program features, including whether the benefit offered is a term- or full-life policy and whether to pay employee shares; and 3) allow municipalities to establish higher rates of return on investments and, thus, set aside less money to meet their liabilities under GASB rules. Mr. Horan also clarified that money from investment returns is reinvested in the program and not commingled with money in a municipality's general fund.

### **Approval of Minutes**

The minutes from the August meeting were adopted without objection.

### **Request for Endorsement of Legislation from the Educational Retirement Board (ERB)**

Jan Goodwin, executive director, ERB, Bob Jacksha, chief investment officer (CIO), ERB, and Roderick Ventura, general counsel, ERB, presented two bills proposed for endorsement.

### **Technical Clean-Up Bill Proposal**

Ms. Goodwin stated that the first bill is intended to update archaic terminology in ERB-related statutes and align those statutes with business practices; the changes, she said, are categorized as: 1) provisional membership; 2) disability benefits; and 3) clarifying and technical.

*Action on proposal.* With no objection, the committee endorsed the bill.

### Classification of Staff and Executive Management Bill Proposal

Ms. Goodwin explained that the second bill would allow the ERB director, subject to board approval, to develop salary classifications and ranges for the ERB's investment staff. The measure, she added, would: 1) address a 2010 recommendation by Ennis Knupp for the ERB to seek salary-setting autonomy for that staff; 2) help the ERB attract and retain qualified investment staff; 3) improve ERB accountability; and 4) apply provisions affecting other state agencies to the ERB. Ms. Goodwin further argued in favor of the measure as follows: 1) current investment staff salaries are relatively low; 2) the ERB is in danger of losing members of that staff because opportunities for higher-paying, similar jobs are available to them; and 3) if the ERB lost members of its investment staff, the agency would have difficulty replacing them.

### Questions and Discussion

On questioning, the committee and ERB staff discussed the following topics in relation to the bill concerning classification of staff and executive management.

***Current status; arguments for and against measure; consequences of enacting the measure.*** A member pointed out that money for the salaries comes from the ERB trust fund, not from the General Fund.

Ms. Goodwin explained that, at present: 1) all positions except that of CIO are classified and are under the State Personnel Office (SPO) classification system; 2) that system provides salary ranges by classification; and 3) about six months ago, ERB staff discussed the salary range issue with SPO staff, who indicated that increasing those ranges was not a priority of the agency. She also explained that the ERB is acting on the 2010 Ennis Knupp recommendation now because the ERB portfolio and salary ranges and the economy have changed since then, and two key positions are now vacant.

A member pointed out that the measure would appropriate some of the governor's power to the ERB and asked whether the ERB had discussed the measure with the Governor's Office. Ms. Goodwin said that the ERB had engaged in such preliminary discussions. She said that the office seemed amenable to the idea and expressed a wish to study the issue further but refrained from committing to signing the bill.

The presenters made arguments in favor of the measure. Ms. Goodwin noted that increasing salaries as proposed would improve the ERB's contributions to the larger state economy. Mr. Jacksha pointed out a risk in not undertaking the measure: the ERB could lose its qualified investment staff and suffer a loss in its future investment-return potential. Mr. Jacksha cited figures illustrating that ERB investment staff salaries are significantly below market rates. Ms. Goodwin commented that, unlike other investing agencies, ERB investment staff actively manage some assets; that practice, she said, saves the agency substantial amounts of money. Mr. Jacksha elaborated that the Public Employees Retirement Association (PERA) has the same ranges and classifications for its investment staff, but those of the State Investment Council (SIC) investment staff differ somewhat: some are governor exempt, and others are classified.

A member expressed, as follows, concerns about enacting the legislation: 1) it would allow one investing agency to operate differently from the others; 2) the ERB's position that it lacks the resources to recruit and maintain qualified investment staff seems to contradict the agency's reports of its high investment performance under the current system; 3) other types of public employees, like teachers and police, deserve higher salaries but have to go without them; and 4) the PERA is not likewise asking for leniency in salary scheduling.

Ms. Goodwin clarified that, under the measure, the ERB would: 1) create salary ranges similar to those of its peers; 2) determine a given employee's salary based on the employee's qualifications and experience; and 3) institute the salary changes over a three-fiscal-year period. Responding to a member's question about whether the ERB would, under the measure, be involved in establishing the salary ranges, Mr. Ventura said that such a provision is already in statute. The member indicated a preference that a requirement for board review and approval of those ranges be included in the bill. Ms. Goodwin assured the committee that the ERB would work on making clear in the bill that salary- and classification-setting are subject to board approval.

A member commented that the agency should have pursued the measure sooner and at a time when it would be easier to adopt. Another member acknowledged the state's current financial difficulty but stressed that maintaining highly qualified investment staff is integral to achieving robust returns and worth the associated costs.

***ERB investment practices.*** Responding to member questions, Mr. Jacksha and Ms. Goodwin explained several aspects of the ERB's investment practices. Mr. Jacksha said that the ERB selects brokers, who execute transactions, through a competitive process; in return, those brokers receive either commissions (for stocks) or payments (for bonds). The ERB also pays fees to outside managers for investment advice and pays for research services, he said. Ms. Goodwin noted that the quarterly investment report made to the board, which is available on the ERB website, contains information on ERB transactions and brokers. Mr. Jacksha further explained that: 1) concerning foreign investments, in 2005, the ERB moved from selecting them from a list of lawful investments to making those decisions using prudent investor rules as guidance; 2) the ERB changes its asset allocation every two years with board consent; 3) to guard against the potential for sweeping losses like those from the formerly widely held mortgage-backed securities, the ERB employs an approach involving oversight and broad diversification and reduced volatility of its overall portfolio; and 4) the ERB follows criteria, which vary by trade type, for choosing brokerage houses to access the market.

***ERB vacancies.*** Ms. Goodwin reported that one seat on the seven-person ERB — a governor-appointed seat — has been vacant since July 1, 2015. A member called the vacancy unsettling, considering the size of the fund (over \$11 billion), the duration of the vacancy and an audit finding of board deficiency in the area of financial expertise. Ms. Goodwin noted that a requirement for eight hours of board training in investment and fiduciary responsibility had been instituted following that finding.

### Action on Proposal

With objection from two members, the committee endorsed the bill. One of the two objecting members explained the member's objection as stemming from a preference that the SPO first study the issue. Ms. Goodwin responded by saying that, though the ERB has presented the SPO with evidence of the pay disparities in this context, the SPO has indicated that changing such investment staff salary ranges is not among its priorities.

### **Request for Endorsement of Legislation from the State Treasurer's Office (STO)**

Tim Eichenberg, state treasurer, presented a bill proposed for endorsement that would require the ERB, PERA, SIC and STO to submit to the state auditor with the agencies' annual audits certain additional financial information. He outlined several of the bill's provisions and explained that the measure would reveal more information about how the affected agencies are using state money. State Treasurer Eichenberg also indicated that the ERB is agreeable to the measure and that the PERA, having reviewed the bill, is generally in agreement with it but has suggested some technical changes.

State Treasurer Eichenberg echoed remarks by Ms. Goodwin concerning the difficulty of recruiting and retaining qualified employees, given budget constraints and Personnel Act limitations. He then introduced two STO employees who accompanied him, Charmaine Cook, state cash manager, and Samuel K. Collins, Jr., deputy treasurer.

### Questions and Discussion

On questioning, the committee and STO staff addressed the following topics.

***Issue affecting the Office of Superintendent of Insurance (OSI).*** Responding to a member's comments on the recently publicized issue of non-collection of insurance taxes, State Treasurer Eichenberg clarified that the bill would not affect the OSI but, rather, the four investing agencies.

***ERB and PERA reaction to bill proposal.*** Ms. Goodwin stated that the ERB could relatively easily produce the supplemental information that would be required of the ERB under the proposed law. The ERB already produces that information for its audited financial statements and its comprehensive annual financial reports. She expressed support for the measure as a way to promote transparency. Wayne Propst, executive director, PERA, who was in the audience, also endorsed the measure and remarked that the PERA, too, could feasibly produce the supplemental information.

***Clarification of bill; reason for measure.*** State Treasurer Eichenberg argued that the bill was warranted, even though the agencies it would affect appear to be largely complying with its provisions and even though the requirements could instead be promulgated by rule by the state auditor. He commented that, although those agency heads are already directing the more robust reporting, without the measure, their successors would not necessarily continue the practice.

***Member reactions to bill proposal.*** A member expressed general support for the bill and commented on the related needs for: 1) more disclosure, particularly in the context of the SIC, by staff on their relationships to key people and institutions, which might reveal potential conflicts of interest; and 2) more time-specific requirements for reporting to legislative interim committees. State Treasurer Eichenberg highlighted the difficulty of ensuring through law that staff abide by ethical principles.

***Status of state's cash balances; payment of warrants.*** Ms. Cook indicated that the state is spending more than it is receiving in revenue and that the state's cash reserves will continue to deplete unless that trend reverses. Two members exchanged their impressions of the current balances of the state's reserve accounts. Mr. Collins cited some related figures. The members stressed the needs for a solvency plan, for more certainty in revenue generation and for the governor to change her position on raising revenue through tax increases. The members also expressed concern for State Treasurer Eichenberg, who, under the circumstances, is exposed to the risk of penalty if he pays a warrant when insufficient funds are available.

#### Action on Proposal

With no objection, the committee endorsed the bill.

#### **Request for Endorsement of Legislation from the PERA**

Karyn Lujan, PERA Smart Save plan manager, PERA, and Greg Trujillo, deputy executive director, PERA, presented two bills proposed for endorsement. Ms. Lujan reminded the committee that the Smart Save plan is a defined contribution plan, which means that it is participant-directed and, as such, places no liability on the PERA, the plan sponsor. She added that, as of October 2016, the plan had 19,800 participants and \$510 million in assets under management. She then reviewed the first bill as follows.

The bill would amend the Deferred Compensation Act, which was enacted in 1981, to allow for electronic transactions related to enrollment and account management. This provision would bring the program up to date with current practices, increase participation in the plan and enhance retirement savings. The bill would also make technical changes to some sections of the act. The PERA board endorsed the legislation.

Mr. Trujillo described the second bill as changing the way payments are made for participants participating in the state retirement systems under reciprocity agreements between those systems' administrators. Specifically, the legislation would provide that each benefits-providing agency pay its portion of the benefit owed separately from the other.

#### Questions and Discussion

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

***Proposal to separate benefit-paying source.*** Mr. Trujillo clarified that: 1) under present law, the ERB or PERA exchange information on benefits, and one of the two agencies pays the

full benefit amount; 2) if the legislation were enacted, a payee would receive two deposits and two 1099 forms, and about 2,500 retirees would be affected; 3) currently, a participant of the ERB and the PERA must provide information upon retirement to one of the two agencies, which then gets shared between them; and 4) if the legislation were enacted, the new law would redress some of the challenge the agencies experience in calculating cost-of-living adjustments and would relieve both agencies of having to correct a mistake made by the other.

***ERB proposal to give the ERB discretion on investment staff salaries and classifications.*** Responding to a member's questions, Jon Grabel, CIO, PERA, who was in the audience, remarked that: 1) the ERB's, PERA's and SIC's portfolios are similar in that they are broadly diversified; and 2) the PERA bases its decision of which assets to manage internally and which to manage externally on a measure of efficiency. Mr. Propst, also in response to members' questions, testified that: 1) the salaries of six PERA employees, including the CIO, are not set by the SPO; 2) depending on the outcome of the proposal to exempt ERB employees from the Personnel Act, the PERA might pursue a similar course, given that the measure would allow for greater compensation of investment staff; 3) the PERA has not discussed the issue with the governor or her staff; and 4) the PERA portfolio is as complex as those of the ERB and SIC. Responding to a member's questions, Mr. Grabel testified that: 1) the PERA's investment staff positions are filled; 2) the PERA is planning to expand that staff by one position; 3) the work of some PERA investment staff persons is substantially similar to that of comparable PERA staff; and 4) several investment staff members at the PERA worked in that capacity at the ERB and vice versa.

***State financial solvency and credit rating.*** A member brought up the issue of the state's financial solvency being in jeopardy and suggested that a mechanism be created whereby money in the permanent funds be tapped to avoid fiscal deficiencies and downgrades in the state's credit ratings.

#### Action on Proposals

With no objection, the committee endorsed both bills.

#### **Adjournment**

There being no further business before the committee, the committee adjourned at 12:10 p.m.





## ENDORSED LEGISLATION



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SENATE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC AUDITS; REQUIRING THE EDUCATIONAL RETIREMENT BOARD, THE OFFICE OF THE STATE TREASURER, THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION AND THE STATE INVESTMENT COUNCIL TO SUBMIT ADDITIONAL FINANCIAL INFORMATION TO THE STATE AUDITOR IN CONJUNCTION WITH THOSE AGENCIES' ANNUAL FINANCIAL AUDITS.

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

SECTION 1. [NEW MATERIAL] ADDITIONAL REPORTS AND DISCLOSURES TO STATE AUDITOR.--Each of the educational retirement board, the office of the state treasurer, the public employees retirement association and the state investment council shall submit, in conjunction with the annual financial audit report each of those agencies is required to submit to the state auditor, the following information for the time period examined in the agency's audit:

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1           A. a discussion and analysis of the agency's  
2 audited financial statements;

3           B. a statement of the changes in the agency's  
4 fiduciary net position that discloses:

5                   (1) the net appreciation or depreciation in  
6 fair value of agency investments;

7                   (2) interest and dividends earned on agency  
8 investments;

9                   (3) income from swaps on agency investments;

10                   (4) any other income resulting from the  
11 agency's investment activity; and

12                   (5) all expenses related to the agency's  
13 investment activity, including management fees, custody fees,  
14 consultant fees, performance-measurement fees and internal  
15 investment activity expenses;

16           C. a schedule of internal investment activity that  
17 shows all expenses related to the agency's internal investment  
18 activity, including expenses for:

19                   (1) salaries and fringe benefits paid or given  
20 to agency personnel;

21                   (2) professional services, including  
22 actuarial, legal, auditing, banking and consulting services;

23                   (3) communication, including telephones and  
24 other communication devices, the maintenance and operation of  
25 those devices, printing, postage and mailing supplies;

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1 (4) facilities and the maintenance and  
2 operation of facilities, including leases, utilities and  
3 depreciation of facilities; and vehicles and the maintenance  
4 and operation of vehicles;

5 (5) computer equipment, software and supplies,  
6 including depreciation of computer equipment, maintenance  
7 agreements, equipment rental and loss on the sale of equipment;

8 (6) education, meetings and travel, including  
9 tuition reimbursement, professional development, travel for the  
10 professional development of agency staff and board members and  
11 travel for conducting due diligence on potential investments;  
12 and

13 (7) general administration, including  
14 advertising, research and information services, insurance,  
15 membership dues, business continuity, office supplies and  
16 subscriptions to periodicals and publications;

17 D. a schedule of administrative expenses that shows  
18 all expenses related to general administration of the agency,  
19 including expenses for:

20 (1) salaries and fringe benefits paid or given  
21 to agency personnel;

22 (2) professional services, including  
23 actuarial, legal, auditing, banking and consulting services;

24 (3) communication, including telephones and  
25 other communication devices and the maintenance and operation

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1 of those devices, printing, postage and mailing supplies;

2 (4) facilities and the maintenance and  
3 operation of facilities, including leases, utilities and  
4 depreciation of facilities; and vehicles and the maintenance  
5 and operation of vehicles;

6 (5) computer equipment, software and supplies,  
7 including depreciation of computer equipment, maintenance  
8 agreements, equipment rental and loss on the sale of equipment;

9 (6) education, meetings and travel, including  
10 tuition reimbursement, professional development, travel for the  
11 professional development of agency staff and board members and  
12 travel for conducting due diligence on potential investments;  
13 and

14 (7) general administration, including  
15 advertising, research and information services, insurance,  
16 membership dues, business continuity, office supplies and  
17 subscriptions to periodicals and publications;

18 E. a schedule of professional and consultant fees  
19 that shows all investment-related services used by the agency  
20 and, for each service, the nature of the service and the amount  
21 paid for the service;

22 F. a schedule of investment advisors that shows all  
23 investment advisors used by the agency and, for each advisor,  
24 the advisor's style and the amount paid to the advisor;

25 G. a schedule of base management fees and

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- 1 performance fees that shows:
- 2 (1) base management fees and performance fees  
3 for each asset class of investments on budget;
- 4 (2) base management fees and performance fees  
5 for each asset class of investments off budget;
- 6 (3) overall investment performance gross of  
7 fees;
- 8 (4) overall investment performance net of  
9 fees;
- 10 (5) investment performance gross of fees for  
11 each asset class;
- 12 (6) investment performance net of fees for  
13 each asset class; and
- 14 (7) unfunded commitments for each asset class;
- 15 H. information on investment performance, including  
16 gross investment performance and investment performance net of  
17 fees; and
- 18 I. a schedule of commissions paid that shows all  
19 agency-paid commissions equal to or greater than five percent  
20 of the total amount of commissions paid by the agency and that  
21 shows, for each commission, the name of the firm that received,  
22 and the amount of, the commission.





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HOUSE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC EMPLOYEES; PROVIDING FOR SEPARATE PAYMENT BY THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION AND THE EDUCATIONAL RETIREMENT BOARD OF RETIREMENT BENEFITS ACCUMULATED UNDER MULTIPLE STATE SYSTEMS.

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

**SECTION 1.** Section 10-13A-4 NMSA 1978 (being Laws 1992, Chapter 116, Section 16, as amended) is amended to read:

"10-13A-4. NORMAL RETIREMENT--PENSION BENEFIT.--If a member has one month or more of eligible reciprocal service credit under each of two or more state systems, the following provisions shall apply, together with the applicable provisions of the Public Employees Retirement Reciprocity Act, the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act

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1 and the rules and regulations for those acts promulgated by the  
2 board:

3 A. a member's total eligible reciprocal service  
4 credit under all state systems shall be used in satisfying the  
5 service credit requirements for normal retirement under the  
6 state system from which the member retires;

7 B. when a member with eligible reciprocal service  
8 credit retires, the member shall receive a pension that is  
9 equal to the sum of the pensions attributable to the service  
10 credit the member has accrued under each state system, subject  
11 to the following restrictions:

12 (1) the salary used in calculating each  
13 component of the pension shall be the salary, average annual  
14 salary or final average salary, as those terms are defined  
15 under the applicable act, earned while the member was covered  
16 under the state system calculating that component as follows:

17 (a) the member's entire salary history  
18 under the public employees retirement system and the  
19 educational retirement system shall be used to determine the  
20 final average salary and annual average salary under each state  
21 system if the member has eligible reciprocal service credit  
22 under both state systems;

23 (b) the member's entire salary history  
24 under the educational retirement system and the judicial  
25 retirement system or the magistrate retirement system, or both,

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1 shall be used to determine the average annual salary under the  
2 Educational Retirement Act if the member has eligible  
3 reciprocal service credit under those state systems but has  
4 less than five years of service credit under the educational  
5 retirement system;

6 (c) the member's salary history under  
7 the educational retirement system shall be used to determine  
8 the average annual salary under that system if the member has  
9 eligible reciprocal service credit under the Educational  
10 Retirement Act and the Judicial Retirement Act or the  
11 Magistrate Retirement Act, or both, and has five or more years  
12 of service credit under the educational retirement system; or

13 (d) if a member has less than twelve  
14 months of credited service under the judicial retirement system  
15 or the magistrate retirement system, the final year's salary  
16 shall be the aggregate amount of salary paid to the member for  
17 the period of credited service divided by the member's credited  
18 service times twelve;

19 (2) the member shall meet the age and service  
20 credit requirements for retirement under each applicable state  
21 system before the component of the pension attributable to  
22 service credit accrued under that state system may be paid;  
23 provided that the member's total eligible reciprocal service  
24 credit under all state systems shall be used in satisfying the  
25 service credit requirement for normal retirement under each

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1 state system;

2 (3) the member shall terminate employment  
3 under all state systems before the member may receive a pension  
4 from any state system; and

5 (4) the member shall file an application for  
6 retirement under the state system under which the member was  
7 last employed, in accordance with the requirements of that  
8 state system;

9 C. subject to the restrictions contained in this  
10 section, the component of the pension attributable to each  
11 state system shall be calculated based upon:

12 (1) the member's eligible reciprocal service  
13 credit acquired as a member of that state system; and

14 (2) the pension calculation formula applicable  
15 to the member under that state system;

16 D. the following limitations shall apply to  
17 pensions calculated under the Public Employees Retirement  
18 Reciprocity Act:

19 (1) in no case shall the total amount of the  
20 pension, calculated under the Public Employees Retirement  
21 Reciprocity Act and received by a member attributable to all  
22 state systems, exceed the amount allowable under Section 415 of  
23 the Internal Revenue Code; and

24 (2) where the member has less than five years  
25 of service credit in one state system, the pension from that

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1 state system shall not exceed six hundred twenty-five [~~one~~]  
2 thousandths percent per month of service under that state  
3 system multiplied by the following amount applicable under that  
4 state system:

5 (a) one-twelfth of the member's  
6 magistrate salary received during the last year in office;

7 (b) one-twelfth of the member's judicial  
8 salary received during the last year in office; or

9 (c) the member's final average salary as  
10 defined pursuant to the Public Employees Retirement Act;

11 E. the state system from which a member [~~with~~]  
12 earned eligible reciprocal service credit [~~retires shall be the~~  
13 ~~payor fund for the pension; provided that:~~

14 ~~(1) each state system shall reimburse the~~  
15 ~~payor fund] shall pay~~ the amount of the component of the  
16 pension attributable to service credit accrued under that state  
17 system; [~~and~~

18 ~~(2) reimbursements shall be made in the manner~~  
19 ~~and frequency determined by the boards;]~~

20 F. in no case shall any member retire from more  
21 than one state system; and

22 G. if a member retires from any state system with  
23 eligible reciprocal service credit and is subsequently employed  
24 by any employer covered by a state system, the retired member's  
25 eligibility to continue to receive pension payments shall be

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1 governed by the retirement act governing the state system from  
2 which the member retired. Subsequent membership in the  
3 retirement program under which the subsequent employee is  
4 covered shall be governed by that retirement act."

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SENATE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO DEFERRED COMPENSATION; AMENDING THE DEFERRED  
COMPENSATION ACT TO UPDATE DEFINITIONS, INVESTMENT OPTIONS,  
TRANSMISSION METHOD AND FILING AND NOTIFICATION REQUIREMENTS.

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

**SECTION 1.** Section 10-7A-2 NMSA 1978 (being Laws 1981,  
Chapter 155, Section 2, as amended) is amended to read:

"10-7A-2. DEFINITIONS.--As used in the Deferred  
Compensation Act:

A. "board" means the public [~~employees~~] employees  
retirement board;

B. "local public body" means all political  
subdivisions of the state, their agencies, instrumentalities  
and institutions;

C. "local public employee" means any officer or

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1 employee to whom a local public body pays a salary for services  
2 rendered;

3 D. "deferred compensation carriers" means any  
4 corporation, partnership or persons [~~who provide investment~~  
5 ~~options~~] providing administrative, recordkeeping or investment  
6 consulting services to participants in deferred compensation  
7 plans pursuant to funding agreements; and

8 E. "state employee" means any officer or employee  
9 to whom the state pays a salary for services rendered."

10 SECTION 2. Section 10-7A-3 NMSA 1978 (being Laws 1984,  
11 Chapter 127, Section 988.1, as amended) is amended to read:

12 "10-7A-3. DEFERRED COMPENSATION PLAN--STATE AND LOCAL  
13 PUBLIC [~~BODY~~] EMPLOYEES.--

14 A. After the effective date of the Deferred  
15 Compensation Act, the board shall review and approve deferred  
16 compensation plans for participation by state and local public  
17 employees. A deferred compensation plan shall provide for the  
18 method of transfer of funds to a plan through written or  
19 electronic salary reduction agreements with state and local  
20 public employees and shall provide for deferral of only those  
21 salary amounts upon which income taxes are eligible for  
22 deferral pursuant to federal law.

23 B. Compensation deferred under any deferred  
24 compensation plan shall be included with current income for  
25 purposes of computing retirement contributions and benefits.

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1 C. Amounts by which salary is reduced shall be  
2 transmitted [~~to the state treasurer or his designated agent who~~  
3 ~~shall then transfer such amounts directly~~] to the approved  
4 deferred compensation carrier.

5 D. Local public employees may [~~through formal~~  
6 ~~action of their governing boards~~] participate in a deferred  
7 compensation plan selected by [~~such governing board~~] their  
8 local public body employer after it takes formal action  
9 conforming to board requirements. If the plan selected is  
10 different from the plan approved by the board, the board shall  
11 have no responsibility concerning the plan. If the plan  
12 selected is that approved by the board pursuant to Section  
13 10-7A-5 NMSA 1978, [~~participation by employees of the local~~  
14 ~~public body so selecting is effected pursuant to~~] the  
15 provisions of Section 10-7A-8 NMSA 1978 shall apply."

16 SECTION 3. Section 10-7A-5 NMSA 1978 (being Laws 1984,  
17 Chapter 127, Section 988.2, as amended) is amended to read:

18 "10-7A-5. DEFERRED COMPENSATION PLAN--APPROVAL.--

19 A. The board shall review proposals providing  
20 investment options to participants of a deferred compensation  
21 plan submitted by deferred compensation carriers [~~which~~] that  
22 have been engaged for a minimum of three years in the business  
23 of funding public employee deferred compensation plans  
24 authorized by 26 U.S.C. Section 457 and approve [~~not more than~~  
25 ~~four such~~] proposals [~~which~~] that are consistent with the goals

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1 of providing state or local public employees with an investment  
2 that, in the opinion of the board, is safe and will provide a  
3 reasonable return to the employees upon their reaching the  
4 appropriate age or date at which they may begin receiving funds  
5 from the deferred compensation plan.

6 B. The type of deferred compensation investment  
7 options that may be approved include

8 ~~[(1) life insurance or annuity contracts with~~  
9 ~~insurance companies licensed to conduct such business in New~~  
10 ~~Mexico;~~

11 ~~(2)] mutual funds, including stock, bond or~~  
12 ~~capital preservation funds [and money market funds;~~

13 ~~(3) deferred compensation investment options~~  
14 ~~of New Mexico banks or savings and loan associations, such~~  
15 ~~banks or savings and loan associations to provide, as security~~  
16 ~~for participants' funds, collateral, such as U.S. treasury~~  
17 ~~securities or other liquid securities, for amounts of~~  
18 ~~participants' funds in excess of applicable depository~~  
19 ~~insurance; and~~

20 ~~(4) other deferred compensation investment~~  
21 ~~options, including those created by the board not requiring~~  
22 ~~funding agreements with deferred compensation carriers, deemed]~~  
23 ~~or any other investments determined by the board to fulfill the~~  
24 ~~goals of providing viable deferred compensation for state or~~  
25 ~~local public employees."~~

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SENATE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC EMPLOYEES; EXEMPTING CERTAIN EDUCATIONAL  
RETIREMENT BOARD EMPLOYEES FROM THE PERSONNEL ACT; ALLOWING THE  
EDUCATIONAL RETIREMENT DIRECTOR TO EMPLOY AND FIX THE SALARIES  
OF CERTAIN EMPLOYEES; PROVIDING THAT THE BOARD FIX THE  
DIRECTOR'S SALARY.

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

SECTION 1. Section 10-9-4 NMSA 1978 (being Laws 1961,  
Chapter 240, Section 4, as amended) is amended to read:

"10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the  
service cover all state positions except:

A. officials elected by popular vote or appointed  
to fill vacancies to elective offices;

B. members of boards and commissions and heads of  
agencies appointed by the governor;

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1 C. heads of agencies appointed by boards or  
2 commissions;

3 D. directors of department divisions;

4 E. those in educational institutions and in public  
5 schools;

6 F. those who are employed by state institutions and  
7 by state agencies providing educational programs and who are  
8 required to hold valid certificates as certified school  
9 instructors as defined in Section 22-1-2 NMSA 1978 issued by  
10 the public education department;

11 G. the chief investment officer of the educational  
12 retirement board and those employed in the investment division  
13 of the board as portfolio managers, investment analysts or  
14 supervisors;

15 [~~G.~~] H. those in the governor's office;

16 [~~H.~~] I. those in the state militia or the  
17 commissioned officers of the New Mexico state police division  
18 of the department of public safety;

19 [~~I.~~] J. those in the judicial branch of government;

20 [~~J.~~] K. those in the public defender department,  
21 upon implementation of personnel policies and rules by the  
22 public defender commission;

23 [~~K.~~] L. those in the legislative branch of  
24 government;

25 [~~L. not more than~~] M. up to two assistants and one

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1 secretary in the office of each official listed in Subsections  
2 A [B] and C of this section [~~excluding members of boards and~~  
3 ~~commissions in Subsection B of this section~~] and in the office  
4 of each head of an agency appointed by the governor;

5 [M-] N. those of a professional or scientific  
6 nature that are temporary in nature;

7 [N-] O. those filled by patients or inmates in  
8 charitable, penal or correctional institutions;

9 [O-] P. state employees if the board in its  
10 discretion decides that the position is one of policymaking;  
11 and

12 [P-] Q. disadvantaged youth under twenty-two years  
13 of age who are regularly enrolled or to be enrolled in a  
14 secondary educational institution approved by the public  
15 education department or in an accredited state institution of  
16 advanced learning or vocational training and who are to be  
17 employed for not more than seven hundred twenty hours during  
18 any calendar year:

19 (1) the term "disadvantaged youth" shall be  
20 defined for purposes of this exemption by regulation duly  
21 promulgated by the board; and

22 (2) the board shall:

23 (a) require that all the criteria of  
24 this subsection have been met;

25 (b) establish employment lists for the

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1 certification of the highest-standing candidates to the  
2 prospective employers; and

3 (c) establish the pay rates for such  
4 employees."

5 SECTION 2. Section 10-9-5 NMSA 1978 (being Laws 1978,  
6 Chapter 96, Section 1, as amended) is amended to read:

7 "10-9-5. PUBLIC OFFICERS AND PUBLIC EMPLOYEES--EXECUTIVE  
8 BRANCH--ANNUAL EXEMPT SALARIES PLAN.--

9 A. The department of finance and administration  
10 shall prepare, by December 1 of each year, an exempt salaries  
11 plan for the governor's approval [~~the plan shall specify~~] that  
12 specifies salary ranges for the following public officer and  
13 public employee positions of the executive branch of  
14 government:

- 15 (1) members of boards and commissions  
16 appointed by the governor;
- 17 (2) heads of agencies or departments appointed  
18 by the governor;
- 19 (3) heads of agencies or departments appointed  
20 by the respective boards and commissions of the agencies;
- 21 (4) directors of department divisions;
- 22 (5) employees in the governor's office;
- 23 (6) positions in the state militia and the  
24 commissioned officers of the New Mexico state police division  
25 of the department of public safety;

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1 (7) assistants and secretaries in the offices  
2 of each official covered by Paragraphs (2) and (3) [~~and (10)~~]  
3 of this subsection;

4 (8) temporary positions of a professional or  
5 scientific nature [~~which are temporary in nature~~]; and

6 (9) state employees whose positions the  
7 [~~personnel~~] board has classified as [~~policy-making~~]  
8 policymaking positions and exempt employees of elective public  
9 officials [~~and~~

10 (~~10~~) ~~secretaries of departments appointed by~~  
11 ~~the governor~~].

12 B. Excluded from the provisions of this section  
13 are:

14 (1) employees of the [~~commission on~~] higher  
15 education department and employees of state educational  
16 institutions named in Article 12, Section 11 of the  
17 constitution of New Mexico; and

18 (2) the chief investment officer of the  
19 educational retirement board and those employed in the  
20 investment division of the board as portfolio managers,  
21 investment analysts or supervisors.

22 C. The exempt salaries plan for the ensuing fiscal  
23 year, as prepared by the department of finance and  
24 administration and approved by the governor, shall be published  
25 as a part of the executive budget document presented to the

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1 legislature at its next regular session following the  
2 preparation of the plan.

3 D. Upon the governor's approval, the plan shall  
4 take effect at the beginning of the subsequent fiscal year."

5 SECTION 3. Section 22-11-7 NMSA 1978 (being Laws 1967,  
6 Chapter 16, Section 131) is amended to read:

7 "22-11-7. EDUCATIONAL RETIREMENT DIRECTOR--BOND--  
8 EMPLOYEES OF THE DIRECTOR.--

9 A. The board shall employ [~~an educational~~  
10 ~~retirement~~] and fix the salary of a director. The director  
11 shall be the administrative officer for the board in carrying  
12 out the provisions of the Educational Retirement Act and shall  
13 have those additional duties provided in the regulations of the  
14 board.

15 B. Before assuming the duties of office, the  
16 director shall obtain an official bond payable to the fund and  
17 conditioned upon the faithful performance of [~~his~~] the  
18 director's duties during [~~his~~] the director's term of office.  
19 The bond shall be executed by a corporate surety company  
20 authorized to do business in this state. The amount of the  
21 bond shall be not less than twenty-five thousand dollars  
22 (\$25,000). The board may elect to obtain a schedule or blanket  
23 corporate surety bond covering the director and employees of  
24 the [~~division~~] board for any period not exceeding four years.  
25 The cost of a bond obtained pursuant to this section shall be

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1 paid from the fund. Any bond obtained shall be approved by the  
2 board and filed with the secretary of state.

3 C. The director may employ a chief investment  
4 officer, portfolio managers, investment analysts and investment  
5 division supervisors to serve at the director's pleasure. The  
6 director shall, within budget allowances and appropriation  
7 limits, fix the salary of an employee serving in any of those  
8 positions."

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SENATE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL  
RETIREMENT ACT TO CLARIFY REQUIREMENTS FOR PROVISIONAL  
MEMBERSHIP, TO ESTABLISH REQUIREMENTS FOR USE OF A MEDICAL  
AUTHORITY TO DETERMINE DISABILITY STATUS AND TO MAKE CLARIFYING  
AND TECHNICAL CHANGES; REPEALING SECTIONS OF THE EDUCATIONAL  
RETIREMENT ACT.

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

**SECTION 1.** Section 22-11-2 NMSA 1978 (being Laws 1967,  
Chapter 16, Section 126, as amended) is amended to read:

"22-11-2. DEFINITIONS.--As used in the Educational  
Retirement Act:

A. "member" means an employee, except for a  
participant or a retired member, coming within the provisions  
of the Educational Retirement Act;

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B. "regular member" means:

(1) a person regularly employed [~~as a~~  
~~teaching, nursing or administrative employee of~~] by a state  
educational institution, except for:

(a) a participant; or

(b) all employees of a general hospital  
or outpatient clinics thereof operated by a state educational  
institution named in Article 12, Section 11 of the constitution  
of New Mexico;

(2) a person regularly employed [~~as a~~  
~~teaching, nursing or administrative employee of~~] by a junior  
college or community college created pursuant to Chapter 21,  
Article 13 NMSA 1978, except for a participant;

(3) a person regularly employed [~~as a~~  
~~teaching, nursing or administrative employee of~~] by a technical  
and vocational institute created pursuant to the Technical and  
Vocational Institute Act, except for a participant;

(4) a person regularly employed [~~as a~~  
~~teaching, nursing or administrative employee of~~] by the New  
Mexico boys' school, the [~~New Mexico~~] girls' [~~school~~] welfare  
home, the Los Lunas medical center or a school district or as a  
licensed school employee of a state institution or agency  
providing an educational program and holding a license issued  
by the department, except for a participant;

(5) a person regularly employed by the

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1 department holding a license issued by the department at the  
2 time of commencement of such employment;

3 (6) a member classified as a regular member in  
4 accordance with the rules of the board;

5 (7) a person regularly employed by the New  
6 Mexico activities association holding a license issued by the  
7 department at the time of commencement of such employment; or

8 (8) a person regularly employed by a regional  
9 education cooperative holding a license issued by the  
10 department at the time of commencement of such employment;

11 C. "provisional member" means a person [~~not~~  
12 ~~eligible to be a regular member but who is employed by a local~~  
13 ~~administrative unit designated in Subsection B of this section;~~  
14 ~~provided, however, that employees of a general hospital or~~  
15 ~~outpatient clinics thereof operated by a state educational~~  
16 ~~institution named in Article 12, Section 11 of the constitution~~  
17 ~~of New Mexico are not provisional members]~~ described in Section  
18 22-11-17 NMSA 1978;

19 D. "local administrative unit" means an employing  
20 agency however constituted that is directly responsible for the  
21 payment of compensation for the employment of members or  
22 participants;

23 E. "beneficiary" means a person having an insurable  
24 interest in the life of a member or a participant designated by  
25 written instrument duly executed by the member or participant

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1 and filed with the director to receive a benefit pursuant to  
2 the Educational Retirement Act that may be received by someone  
3 other than the member or participant;

4 F. "employment" means employment by a local  
5 administrative unit that qualifies a person to be a member or  
6 participant;

7 G. "service employment" means employment that  
8 qualifies a person to be a regular member;

9 H. "provisional service employment" means  
10 employment that qualifies a person to be a provisional member;

11 I. "prior employment" means employment performed  
12 prior to the effective date of the Educational Retirement Act  
13 that would be service employment or provisional service  
14 employment if performed thereafter;

15 J. "service credit" means that period of time with  
16 which a member is accredited for the purpose of determining  
17 [~~his~~] the member's eligibility for and computation of  
18 retirement or disability benefits;

19 K. "earned service credit" means that period of  
20 time during which a member was engaged in employment or prior  
21 employment with which [~~he~~] the member is accredited for the  
22 purpose of determining [~~his~~] the member's eligibility for  
23 retirement or disability benefits;

24 L. "allowed service credit" means that period of  
25 time during which a member has performed certain nonservice

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1 employment with which ~~he~~ the member may be accredited, as  
2 provided in the Educational Retirement Act, for the purpose of  
3 computing retirement or disability benefits;

4 M. "retirement benefit" means an annuity paid  
5 monthly to members whose employment has been terminated by  
6 reason of their age;

7 N. "disability benefit" means an annuity paid  
8 monthly to members whose employment has been terminated by  
9 reason of a disability;

10 O. "board" means the educational retirement board;

11 P. "fund" means the educational retirement fund;

12 Q. "director" means the educational retirement  
13 director;

14 R. "medical authority" means a medical doctor  
15 ~~[within the state or as provided in Subsection D of Section~~  
16 ~~22-11-36 NMSA 1978 either]~~ or medical review panel designated  
17 or employed by the board to examine medical records and report  
18 on the ~~[physical]~~ medical condition of applicants for or  
19 recipients of disability benefits;

20 S. "actuary" means a person trained and regularly  
21 engaged in the occupation of calculating present and projected  
22 monetary assets and liabilities under annuity or insurance  
23 programs;

24 T. "actuarial equivalent" means a sum paid as a  
25 current or deferred benefit that is equal in value to a regular

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1 benefit, computed upon the basis of interest rates and  
2 mortality tables;

3 U. "contributory employment" means employment for  
4 which contributions have been made by both a member and a local  
5 administrative unit pursuant to the Educational Retirement Act;

6 V. "qualifying state educational institution" means  
7 the university of New Mexico, New Mexico state university, New  
8 Mexico institute of mining and technology, New Mexico highlands  
9 university, eastern New Mexico university, western New Mexico  
10 university, [~~Albuquerque technical-vocational institute~~]  
11 central New Mexico community college, Clovis community college,  
12 Luna [~~vocational-technical institute, Mesa technical~~] community  
13 college, Mesalands community college, New Mexico junior  
14 college, northern New Mexico state school, San Juan college and  
15 Santa Fe community college;

16 W. "participant" means:

17 (1) a person regularly employed as a faculty  
18 or professional employee of the university of New Mexico, New  
19 Mexico state university, New Mexico institute of mining and  
20 technology, New Mexico highlands university, eastern New Mexico  
21 university or western New Mexico university who first becomes  
22 employed with such an educational institution on or after July  
23 1, 1991, or a person regularly employed as a faculty or  
24 professional employee of the [~~Albuquerque technical-vocational~~  
25 ~~institute~~] central New Mexico community college, Clovis

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1 community college, Luna [~~vocational-technical institute, Mesa~~  
2 ~~technical~~] community college, Mesalands community college, New  
3 Mexico junior college, northern New Mexico state school, San  
4 Juan college or Santa Fe community college who is first  
5 employed by the institution on or after July 1, 1999 and who  
6 elects, pursuant to Section 22-11-47 NMSA 1978, to participate  
7 in the alternative retirement plan; and

8 (2) a person regularly employed who performs  
9 research or other services pursuant to a contract between a  
10 qualifying state educational institution and the United States  
11 government or any of its agencies who elects, pursuant to  
12 Section 22-11-47 NMSA 1978, to participate in the alternative  
13 retirement plan; provided that the research or other services  
14 are performed outside the state;

15 X. "salary" means the compensation or wages paid to  
16 a member or participant by any local administrative unit for  
17 services rendered. "Salary" includes payments made for annual  
18 or sick leave and payments for additional service provided to  
19 related activities, but does not include payments for sick  
20 leave not taken unless the payment for the unused sick leave is  
21 made through continuation of the member on the regular payroll  
22 for the period represented by that payment and does not include  
23 allowances or reimbursements for travel, housing, food,  
24 equipment or similar items;

25 Y. "alternative retirement plan" means the

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1 retirement plan provided for in Sections 22-11-47 through  
2 22-11-52 NMSA 1978; and

3 Z. "retired member" means a person whose employment  
4 has been terminated by reason of age and who is receiving or is  
5 eligible to receive retirement benefits."

6 SECTION 2. Section 22-11-4 NMSA 1978 (being Laws 1967,  
7 Chapter 16, Section 128, as amended) is amended to read:

8 "22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS.--

9 A. The board shall hold regular meetings four times  
10 each year and may [~~by its bylaws~~] provide for additional  
11 regular meetings. Prior to each regular meeting, written  
12 notice shall be given to each member of the board specifying  
13 the time and place of the regular meeting.

14 B. Special meetings of the board may be called by  
15 the [~~chairman~~] chair or by any three members of the board.  
16 Written notice of the special meeting shall be sent to each  
17 member of the board at least three days in advance of the  
18 special meeting.

19 C. If not in violation of Subsection A or B of this  
20 section, the rules of the board or the Open Meetings Act, the  
21 [~~chairman~~] chair or any of three members of the board may  
22 cancel or reschedule a meeting."

23 SECTION 3. Section 22-11-5.1 NMSA 1978 (being Laws 1999,  
24 Chapter 153, Section 2) is amended to read:

25 "22-11-5.1. RESTRICTIONS ON RECEIPT OF GIFTS [~~RESTRICTION~~

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1 ~~ON CAMPAIGN CONTRIBUTIONS--REQUIRED REPORTING].--~~[A.] Except  
2 for gifts of food or beverage given in a place of public  
3 accommodation, consumed at the time of receipt, not exceeding  
4 fifty dollars (\$50.00) for a single gift and the aggregate  
5 value of which gifts may not exceed one hundred fifty dollars  
6 (\$150) in a calendar year, neither a board member nor an  
7 employee of the board shall receive or accept anything of value  
8 directly or indirectly from a person who:

9           ~~(1)~~ A. has a current contract with the  
10 [~~retirement~~] board; [~~or association~~;

11           ~~(2)~~ B. is a potential bidder, offeror or  
12 contractor for the provision of services or personal property  
13 to the [~~retirement~~] board; [~~or association~~;

14           ~~(3)~~ C. is authorized to invest public funds  
15 pursuant to state or federal law or is an employee or agent of  
16 such a person; or

17           ~~(4)~~ D. is an organization, association or other  
18 entity having a membership that includes persons described in  
19 [~~Paragraphs (1) through (3) of this subsection~~] Subsections A  
20 through C of this section."

21           SECTION 4. Section 22-11-6 NMSA 1978 (being Laws 1967,  
22 Chapter 16, Section 130, as amended) is amended to read:

23           "22-11-6. BOARD--POWERS--DUTIES.--

24           A. The board shall:

25                   (1) properly and uniformly enforce the

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1 Educational Retirement Act;

2 (2) hire employees and delegate administrative  
3 authority to these employees;

4 (3) make an actuarial report on the financial  
5 operation of the Educational Retirement Act to the legislature  
6 at each regular session every odd-numbered year;

7 (4) accept donations, gifts or bequests to the  
8 fund; and

9 (5) adopt regulations pursuant to the  
10 Educational Retirement Act.

11 B. The board may:

12 (1) select and contract for the services of  
13 one or more custodial banks. For purposes of this subsection,  
14 "custodial bank" means a financial institution with the general  
15 fiduciary duties to manage, control and collect the assets of  
16 an investment fund, including receiving all deposits and paying  
17 all disbursements as directed by staff, safekeeping of assets,  
18 coordination of asset transfers, timely settlement of  
19 securities transactions and accurate and timely reporting by  
20 individual account and in total; and

21 (2) contract for legal services for litigation  
22 matters on a contingent fee basis, subject to the provisions of  
23 the Procurement Code; provided that:

24 (a) the board shall submit each proposed  
25 contract to the attorney general for review of the contingency

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1 fee. The attorney general shall review a proposed contract  
2 within thirty days after receiving the contract. The review  
3 shall take into account the complexity of the factual and legal  
4 issues presented by the claims to be pursued under the  
5 contract. If the attorney general advises the board that the  
6 proposed contingency fee is not reasonable, the board may  
7 nevertheless approve the contract and the contingency fee if no  
8 fewer than four members vote for approval;

9 (b) each prospective contractor seeking  
10 to represent the board on a contingency fee basis shall file  
11 with the board the disclosure required by Section 13-1-191.1  
12 NMSA 1978 disclosing all campaign contributions made to the  
13 governor, attorney general, state treasurer or any member of  
14 the board, or to a political committee that is intended to aid  
15 or promote the nomination or election of any candidate to a  
16 state office if the committee is: 1) established by any of the  
17 foregoing persons or their agents; 2) established in  
18 consultation with or at the request of any of the foregoing  
19 persons or their agents; or 3) controlled by one of the  
20 foregoing persons or their agents; and

21 (c) nothing in this paragraph shall  
22 prejudice or impair the rights of a qui tam plaintiff pursuant  
23 to the Fraud Against Taxpayers Act."

24 SECTION 5. Section 22-11-7 NMSA 1978 (being Laws 1967,  
25 Chapter 16, Section 131) is amended to read:

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1 "22-11-7. EDUCATIONAL RETIREMENT DIRECTOR--BOND.--

2 A. The board shall employ an educational retirement  
3 director. The director shall be the administrative officer for  
4 the board in carrying out the provisions of the Educational  
5 Retirement Act and shall have those additional duties provided  
6 in the [~~regulations~~] rules of the board.

7 B. Before assuming the duties of office, the  
8 director shall obtain an official bond payable to the fund and  
9 conditioned upon the faithful performance of [~~his~~] the  
10 director's duties during [~~his~~] the director's term of office.  
11 The bond shall be executed by a corporate surety company  
12 authorized to do business in this state. The amount of the  
13 bond shall be not less than twenty-five thousand dollars  
14 (\$25,000). The board may elect to obtain a schedule or blanket  
15 corporate surety bond covering the director and employees of  
16 the [~~division~~] board for any period not exceeding four years.  
17 The cost of a bond obtained pursuant to this section shall be  
18 paid from the fund. Any bond obtained shall be approved by the  
19 board and filed with the secretary of state."

20 SECTION 6. Section 22-11-8 NMSA 1978 (being Laws 1967,  
21 Chapter 16, Section 132) is amended to read:

22 "22-11-8. MEDICAL AUTHORITY--FEES.--

23 A. The board shall employ the services of a medical  
24 authority. The medical authority [~~shall~~] may examine, make  
25 reports of and certify the [~~physical~~] medical condition of

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1 applicants for and recipients of disability benefits pursuant  
2 to the Educational Retirement Act.

3 B. The board shall pay the medical authority a  
4 reasonable fee for [his] professional services."

5 SECTION 7. Section 22-11-9 NMSA 1978 (being Laws 1967,  
6 Chapter 16, Section 133, as amended) is amended to read:

7 "22-11-9. ACTUARY--FEES.--

8 A. The board shall employ the services of an  
9 actuary. The actuary shall prepare a table of actuarial  
10 equivalents for use of the board and the director in computing  
11 the value of advanced, deferred or optional payment of benefits  
12 pursuant to the Educational Retirement Act. The actuary shall  
13 also study the financial operations of the Educational  
14 Retirement Act and shall make written reports thereon to the  
15 board.

16 B. The board shall pay the actuary a reasonable fee  
17 for [his] professional services.

18 C. Unless otherwise required by the governmental  
19 accounting standards board of the American institute of  
20 certified public accountants, an actuarial report shall be  
21 conducted at least once every three years."

22 SECTION 8. Section 22-11-17 NMSA 1978 (being Laws 1967,  
23 Chapter 16, Section 141, as amended) is amended to read:

24 "22-11-17. PROVISIONAL MEMBERSHIP.--

25 [~~A. A provisional member shall be covered by the~~

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1 ~~provisions of the Educational Retirement Act but shall have the~~  
2 ~~option to exempt himself from its coverage. A provisional~~  
3 ~~member exempting himself from the provisions of the Educational~~  
4 ~~Retirement Act shall not be entitled to the benefits or~~  
5 ~~coverage under any other state retirement program except as~~  
6 ~~otherwise provided in this section. This section shall not~~  
7 ~~affect any rights a provisional member may have under the~~  
8 ~~provisions of the federal Social Security Act. This option to~~  
9 ~~exempt must be exercised within one year of employment~~  
10 ~~according to the regulations adopted by the board. Any~~  
11 ~~provisional member exempting himself pursuant to this section~~  
12 ~~shall be entitled to a refund of any contributions made~~  
13 ~~pursuant to the Educational Retirement Act prior to the~~  
14 ~~exercise of the exemption.~~

15           ~~B. A provisional member not exempt from the~~  
16 ~~coverage of the Educational Retirement Act shall have the right~~  
17 ~~to earned service credit for periods of employment subsequent~~  
18 ~~to July 1, 1957 and prior to July 1, 1961, provided that all~~  
19 ~~contributions at the rates in effect during that period of~~  
20 ~~employment are paid. If a provisional member chooses to make~~  
21 ~~the contributions for that period, the local administrative~~  
22 ~~unit employing a member during that period shall pay the~~  
23 ~~employer's contribution at the rate in effect during that~~  
24 ~~period of employment. Contributions prior to July 1, 1961 by~~  
25 ~~both the provisional member and the local administrative unit~~

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1 shall bear interest at the rate of three percent a year from  
2 July 1, 1961 until paid.

3 G. ~~A provisional member exempt from the coverage of~~  
4 ~~the provisions of the Educational Retirement Act shall have the~~  
5 ~~right to revoke the exemption at any time; however, within the~~  
6 ~~first two weeks following the beginning of each school year,~~  
7 ~~such provisional member shall be informed by the local~~  
8 ~~administrative unit in writing of his right to revoke the~~  
9 ~~exemption and shall sign a statement to the effect that he does~~  
10 ~~or does not wish to revoke the exemption. A copy of such~~  
11 ~~statement shall be kept in the personnel file of the~~  
12 ~~provisional member.~~

13 D. ~~A provisional member who revokes the exemption~~  
14 ~~from coverage may, at any time before June 30, 2006, acquire~~  
15 ~~earned service credit for periods of employment during which~~  
16 ~~the exemption or exemptions were in force if both the member~~  
17 ~~contributions and the local administrative unit contributions,~~  
18 ~~at the rates in effect during the periods of employment and~~  
19 ~~applied to the earnings of the member during those periods, are~~  
20 ~~paid to the fund, together with interest at the actuarial rate~~  
21 ~~set by the board. The contributions shall be paid in the~~  
22 ~~following manner:~~

23 ~~(1) both the member contributions and the~~  
24 ~~local administrative unit contributions, together with~~  
25 ~~interest, shall be paid by the member; or~~

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1                   ~~(2) if the member tenders payment of the~~  
2 ~~member contributions, with interest, the local administrative~~  
3 ~~unit by whom the member was employed may, but shall not be~~  
4 ~~obligated to, pay the local administrative unit contributions,~~  
5 ~~with interest.~~

6                   E.] A provisional member is a person who is employed  
7 by the board, the department [~~of education~~], the New Mexico  
8 school for the deaf, the northern New Mexico state school, the  
9 New Mexico school for the blind and visually [~~handicapped~~  
10 impaired, the [~~New Mexico~~] girls' [~~school~~] welfare home, the  
11 New Mexico boys' school or the Los Lunas medical center [~~shall~~  
12 have] and who has the option of qualifying for coverage under  
13 either the Educational Retirement Act or the public employees  
14 retirement association [~~of New Mexico~~]. This option shall be  
15 exercised by filing a written election with both the  
16 [~~educational retirement~~] director and the executive secretary  
17 of the public employees retirement association [~~of New Mexico~~].  
18 This election shall be made within six months after employment  
19 and shall be irrevocable regardless of subsequent employment or  
20 reemployment in any administrative unit enumerated in this  
21 [~~subsection~~] section. Until this election is made, the  
22 provisional member shall be covered and shall be required to  
23 make contributions under the Educational Retirement Act."

24                   SECTION 9. Section 22-11-21.3 NMSA 1978 (being Laws 1998,  
25 Chapter 38, Section 1, as amended) is amended to read:

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1 "22-11-21.3. PICK UP--ROLLOVER.--

2 A. Commencing on July 1, 1998, each local  
3 administrative unit may, solely for the purpose of compliance  
4 with Section 414(h) of the Internal Revenue Code of 1986, pick  
5 up, for the purposes specified in that section, member  
6 contributions permitted by [~~Subsection D of~~] Section 22-11-17  
7 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or  
8 Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978.  
9 Member contributions picked up under the provisions of this  
10 subsection shall be treated as local administrative unit  
11 contributions for purposes of determining income tax  
12 obligations under the Internal Revenue Code of 1986; however,  
13 such picked-up member contributions shall be included in the  
14 determination of the member's gross annual salary for all other  
15 purposes under federal and state laws. Member contributions  
16 picked up under this section shall continue to be designated  
17 member contributions for all purposes of the Educational  
18 Retirement Act and shall be considered as part of the member's  
19 annual salary for purposes of determining the amount of the  
20 member's contribution. The provisions of this section are  
21 voluntary, and the member shall have no option concerning the  
22 pick up to receive the contributed amounts directly instead of  
23 having them paid by the local administrative unit to the fund.  
24 The contribution may be paid through the local administrative  
25 unit's payroll deduction.

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1           B. Commencing July 1, 1998, the board may accept  
2 rollover contributions from other retirement funds solely for  
3 and subject to the restrictions set forth in Section 22-11-17  
4 NMSA 1978 and Subsection B of Section 22-11-34 NMSA 1978 and  
5 the applicable restrictions set forth in the Internal Revenue  
6 Code of 1986 for pension plan qualification."

7           **SECTION 10.** Section 22-11-25 NMSA 1978 (being Laws 1967,  
8 Chapter 16, Section 148) is amended to read:

9           "22-11-25. RETIREMENT--REEMPLOYMENT.--

10           A. A member retired pursuant to the provisions of  
11 the Educational Retirement Act may [~~remove himself~~] be removed  
12 from retirement status by returning to employment. A  
13 reemployed member shall make regular contributions pursuant to  
14 the Educational Retirement Act. Upon termination of  
15 reemployment, the member shall be eligible for retirement  
16 benefits again based upon all [~~service credit~~] service credit  
17 acquired. In no case shall the retirement benefits be less  
18 than the member was receiving prior to [~~his~~] the member's  
19 reemployment. [~~Except as provided in Subsection B of this~~  
20 ~~section, the member shall not receive greater retirement~~  
21 ~~benefits than he was receiving prior to his reemployment unless~~  
22 ~~he has not less than five years of employment subsequent to~~  
23 ~~July 1, 1957 with all contributions required by the Educational~~  
24 ~~Retirement Act having been paid on the earnings derived through~~  
25 ~~this employment.~~

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1           ~~B. A member retired pursuant to the provisions of~~  
2 ~~the Educational Retirement Act returning to employment for not~~  
3 ~~less than one year after July 1, 1957 and prior to July 1, 1963~~  
4 ~~shall be eligible for retirement benefits pursuant to this~~  
5 ~~section if the following conditions occur:~~

6                   ~~(1) the member's contributions on the salary~~  
7 ~~earned during that period of reemployment must be paid at the~~  
8 ~~rate which was in effect at that time. If this contribution is~~  
9 ~~made, the local administrative unit employing the member during~~  
10 ~~that period shall pay the local administrative units~~  
11 ~~contribution at the rate in effect at that time; and~~

12                   ~~(2) the member shall have fulfilled the five-~~  
13 ~~year contributory employment requirement specified in Section~~  
14 ~~77-9-23 New Mexico Statutes Annotated, 1953 Compilation.~~

15           ~~G.] B.~~ At the time of retirement following a period  
16 of reemployment, the member's retirement benefits shall be paid  
17 in accordance with the terms of the option selected at the time  
18 of the first retirement. [~~A member qualified to retire~~  
19 ~~pursuant to this section after having reentered employment~~  
20 ~~after retiring prior to July 1, 1957 shall be eligible to~~  
21 ~~retire under the options specified in Section 77-9-28 New~~  
22 ~~Mexico Statutes Annotated, 1953 Compilation.]"~~

23           SECTION 11. Section 22-11-29 NMSA 1978 (being Laws 1967,  
24 Chapter 16, Section 152, as amended) is amended to read:

25           "22-11-29. RETIREMENT BENEFIT OPTIONS.--

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1           A. Upon retirement pursuant to the Educational  
2 Retirement Act, a member may elect, and, except as provided in  
3 Subsection D or E of this section, such election shall be  
4 irrevocable, to receive the actuarial equivalent of the  
5 member's retirement benefit, as provided in Section 22-11-30  
6 NMSA 1978, to be effective on the member's retirement in any  
7 one of the following optional forms:

8                   (1) OPTION A. An unreduced retirement benefit  
9 pursuant to Section 22-11-30 NMSA 1978;

10                   ~~(1)~~ (2) OPTION B. A reduced annuity payable  
11 during the member's life with provision that upon the member's  
12 death the same annuity shall be continued during the life of  
13 and paid to the beneficiary designated by the member in writing  
14 at the time of electing this option; or

15                   ~~(2)~~ (3) OPTION C. A reduced annuity payable  
16 during the member's life with provision that upon the member's  
17 death one-half of this same annuity shall be continued during  
18 the life of and paid to the beneficiary designated by the  
19 member in writing at the time of electing this option.

20           B. In the case of Options B and C of Subsection A  
21 of this section, the actuarial equivalent of the member's  
22 retirement benefit shall be computed on the basis of the lives  
23 of both the member and the beneficiary.

24           C. In the event that the named beneficiary of a  
25 retired member who elected Option B or C of Subsection A of

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1 this section at the time of retirement predeceases the retired  
2 member, the annuity of the retired member shall be adjusted by  
3 adding an amount equal to the amount by which the annuity of  
4 the retired member was reduced at retirement as a result of the  
5 election of Option B or C. The adjustment authorized in this  
6 subsection shall be made as follows:

7 (1) beginning on the first month following the  
8 month in which the named beneficiary of a retiree dies  
9 applicable to an annuity received by a retiree who retires  
10 after June 30, 1987; or

11 (2) beginning on July 1, 1987 applicable to an  
12 annuity received by a retiree who retired prior to  
13 July 1, 1987 and otherwise qualifies for the adjustment;  
14 provided, however, no adjustment shall be made retroactively.

15 D. A retired member who is being paid an adjusted  
16 annuity pursuant to Subsection C of this section because of the  
17 death of the named beneficiary may exercise a one-time  
18 irrevocable option to designate another individual as the  
19 beneficiary and may select either Option B or Option C of  
20 Subsection A of this section; provided that:

21 (1) the amount of the annuity under the option  
22 selected shall be recalculated and have the same actuarial  
23 present value, computed on the effective date of the  
24 designation, as the annuity being paid to the retired member  
25 prior to the designation;

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1                   (2) the designation and the amount of the  
2 annuity shall be subject to a court order as provided for in  
3 Subsection B of Section 22-11-42 NMSA 1978; and

4                   (3) the retired member shall pay one hundred  
5 dollars (\$100) to the board to defray the cost of determining  
6 the new annuity amount.

7                   E. A retired member who is being paid an annuity  
8 under Option B or C of Subsection A of this section with a  
9 living designated beneficiary other than the retired member's  
10 spouse or former spouse may exercise a one-time irrevocable  
11 option to deselect the designated beneficiary and elect to:

12                               (1) designate another beneficiary; provided  
13 that:

14                                       (a) the retired member shall not have an  
15 option to change from the current form of payment;

16                                       (b) the amount of the annuity under the  
17 form of payment shall be recalculated and shall have the same  
18 actuarial present value, computed as of the effective date of  
19 the designation, as the amount of annuity paid prior to the  
20 designation; and

21                                       (c) the retired member shall pay one  
22 hundred dollars (\$100) to the board to defray the cost of  
23 determining the new annuity amount; or

24                               (2) have future annuity payments made without  
25 a reduction as a result of Option B or C.

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1           F. In the event of the death of the member who has  
2 not retired and who has completed at least five years' earned  
3 service credit, the member shall be considered as retiring on  
4 the first day of the month following the date of death, and the  
5 benefits due the surviving beneficiary, computed as of that  
6 date, shall, except as provided in Subsection I of this  
7 section, be commenced effective on the first day of such month  
8 in accordance with the terms of Option B of Subsection A of  
9 this section. In lieu of the provisions of Option B, the  
10 surviving beneficiary may elect to receive payment of all the  
11 contributions made by the member, plus interest at the rate set  
12 by the board reduced by the sum of any disability benefits  
13 previously received by the member, or the surviving beneficiary  
14 may choose to defer receipt of the survivor's benefit to  
15 whatever age the beneficiary chooses up to the time the member  
16 would have attained age sixty. If the benefit is thus  
17 deferred, it shall be calculated as though the member had  
18 retired on the first day of the month in which the beneficiary  
19 elects to receive the benefit. In the event of the death of  
20 the beneficiary after the death of the member and prior to the  
21 date on which the beneficiary has elected to receive the  
22 beneficiary's benefit, the estate of the beneficiary shall be  
23 entitled to a refund of the member's contributions plus  
24 interest at the rate earned by the fund during the preceding  
25 fiscal year, reduced by the sum of any disability benefits

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1 previously received by the member.

2 G. In the case of death of a retired member who did  
3 not elect either Option B or C of Subsection A of this section  
4 and before the benefits paid to the member have equaled the sum  
5 of the member's accumulated contributions to the fund plus  
6 accumulated interest at the rate set by the board, the balance  
7 shall be paid to the beneficiary designated in writing to the  
8 director by the member or, if no beneficiary was designated, to  
9 the estate of the member.

10 H. No benefit shall be paid pursuant to this  
11 section if the member's contributions have been refunded  
12 pursuant to Section 22-11-15 NMSA 1978.

13 I. In the case of death of a member with less than  
14 five years' earned service credit or death of a member who has  
15 filed with the director a notice rejecting the provisions of  
16 Subsection F of this section, which notice shall be revocable  
17 by the member at any time prior to retirement, the member's  
18 contributions to the fund plus interest at the rate set by the  
19 board shall be paid to the beneficiary designated in writing to  
20 the director by the member or, if no beneficiary was  
21 designated, to the estate of the member.

22 ~~[J. Any elections of either Option B or C of~~  
23 ~~Subsection A of this section on file with the director on June~~  
24 ~~30, 1984 by members who have not retired prior to June 30, 1984~~  
25 ~~are void.]"~~

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1           SECTION 12. Section 22-11-31 NMSA 1978 (being Laws 1979,  
2 Chapter 333, Section 2, as amended) is amended to read:

3           "22-11-31. COST-OF-LIVING ADJUSTMENT--ELIGIBILITY--BASED  
4 ON FUNDED RATIO--ADDITIONAL CONTRIBUTIONS.--

5           A. For the purposes of this section:

6                   (1) "adjustment factor" means a multiplicative  
7 factor computed to provide an annuity adjustment pursuant to  
8 the provisions of Subsection B of this section;

9                   (2) "annuity" means any benefit payable under  
10 the Educational Retirement Act or the Public Employees  
11 Retirement Reciprocity Act as a retirement benefit, disability  
12 benefit or survivor benefit;

13                   (3) "calendar year" means the full twelve  
14 months beginning January 1 and ending December 31;

15                   (4) "consumer price index" means the average  
16 of the monthly consumer price indexes for a calendar year for  
17 the entire United States for all items as published by the  
18 United States department of labor;

19                   (5) "funded ratio" means the ratio of the  
20 actuarial value of the assets of the fund to the actuarial  
21 accrued liability of the educational retirement system;

22                   (6) "median adjusted annuity" means the median  
23 value of all annuities and retirement benefits paid pursuant to  
24 Section 22-11-29 or 22-11-30 NMSA 1978, as calculated each  
25 fiscal year; provided, however, that the benefits paid to a

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1 member pursuant to Section 22-11-38 NMSA 1978 shall not be  
2 included in the median adjusted annuity calculation;

3 (7) "next preceding calendar year" means the  
4 full calendar year immediately prior to the preceding calendar  
5 year; and

6 (8) "preceding calendar year" means the full  
7 calendar year preceding the July 1 on which a benefit is to be  
8 adjusted.

9 B. On or after July 1, 1984:

10 (1) the annuity of a member who retires  
11 pursuant to Subsection A of Section 22-11-23 NMSA 1978 or  
12 Subsection A of Section 22-11-23.1 NMSA 1978 shall be adjusted  
13 annually and cumulatively commencing on July 1 of the year in  
14 which a member attains the age of sixty-five years or on July 1  
15 following the year a member retires, whichever is later; and

16 (2) the annuity of a member who retires  
17 pursuant to Subsection A of Section 22-11-23.2 NMSA 1978 shall  
18 be adjusted annually and cumulatively commencing on July 1 of  
19 the year in which the member attains the age of sixty-seven  
20 years or on July 1 following the year the member retires,  
21 whichever is later.

22 C. Beginning on July 1, 2013 and on each July 1  
23 thereafter:

24 (1) if the funded ratio of the fund as  
25 reported by the board's actuary in the actuarial valuation

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1 report for the next preceding fiscal year is one hundred  
2 percent or greater, the annuity adjustments provided for under  
3 Subsection B of this section shall be adjusted by applying an  
4 adjustment factor based on the percentage increase of the  
5 consumer price index between the next preceding calendar year  
6 and the preceding calendar year. The adjustment factor shall  
7 be applied as follows:

8 (a) if the percentage increase of the  
9 consumer price index is less than two percent in absolute  
10 value, the adjustment factor shall be the same amount as the  
11 percentage increase of the consumer price index; and

12 (b) if the percentage increase of the  
13 consumer price index is two percent or greater in absolute  
14 value, the adjustment factor shall be one-half of the  
15 percentage increase; except that the adjustment shall not  
16 exceed four percent in absolute value nor be less than two  
17 percent in absolute value;

18 (2) if the funded ratio of the fund as  
19 reported by the board's actuary in the actuarial report for the  
20 next preceding fiscal year is greater than ninety percent but  
21 less than one hundred percent, except for a member who is on  
22 disability status in accordance with Section 22-11-35 NMSA 1978  
23 and whose benefit is adjusted as provided in Subsection G of  
24 this section or a member who is retired pursuant to Section  
25 22-11-38 NMSA 1978, the adjustment factor provided for in

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1 Subsection B of this section shall be applied as follows:

2 (a) if the percentage increase in the  
3 consumer price index is less than two percent in absolute  
4 value, for a member who has twenty-five or more years of  
5 service credit at retirement and whose annuity is less than or  
6 equal to the median adjusted annuity for the fiscal year next  
7 preceding the adjustment date, the adjustment factor shall be  
8 ninety-five percent of the adjustment factor determined  
9 pursuant to Subparagraph (a) of Paragraph (1) of this  
10 subsection;

11 (b) if the percentage increase in the  
12 consumer price index is less than two percent in absolute  
13 value, for a member who has less than twenty-five years of  
14 service credit at retirement and whose annuity is less than or  
15 equal to the median adjusted annuity for the fiscal year next  
16 preceding the adjustment date, and for a member whose annuity  
17 is greater than the median adjusted annuity for the fiscal year  
18 next preceding the adjustment date, the adjustment factor shall  
19 be ninety percent of the adjustment factor determined pursuant  
20 to Subparagraph (a) of Paragraph (1) of this subsection;

21 (c) if the percentage increase in the  
22 consumer price index is greater than or equal to two percent in  
23 absolute value for a member who has twenty-five or more years  
24 of service credit at retirement and whose annuity is less than  
25 or equal to the median adjusted annuity for the fiscal year

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1 next preceding the adjustment date, the adjustment factor shall  
2 be ninety-five percent of the adjustment factor determined  
3 under Subparagraph (b) of Paragraph (1) of this subsection; and

4 (d) if the percentage increase in the  
5 consumer price index is greater than or equal to two percent in  
6 absolute value, for a member who has less than twenty-five  
7 years of service credit at retirement and whose annuity is less  
8 than or equal to the median adjusted annuity for the fiscal  
9 year next preceding the adjustment date, and for a member whose  
10 annuity is greater than the median adjusted annuity for the  
11 fiscal year next preceding the adjustment date, the adjustment  
12 factor shall be ninety percent of the adjustment factor  
13 determined under Subparagraph (b) of Paragraph (1) of this  
14 subsection;

15 (3) if the funded ratio of the fund as  
16 reported by the board's actuary in the actuarial valuation  
17 report for the next preceding fiscal year is ninety percent or  
18 less, except for a member who is on disability status in  
19 accordance with Section 22-11-35 NMSA 1978 and whose benefit is  
20 adjusted as provided in Subsection G of this section or a  
21 member who is retired pursuant to Section 22-11-38 NMSA 1978,  
22 the adjustment factor provided for in Subsection B of this  
23 section shall be applied as follows:

24 (a) if the percentage increase in the  
25 consumer price index is less than two percent in absolute

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1 value, for a member who has twenty-five or more years of  
2 service credit at retirement and whose annuity is less than or  
3 equal to the median adjusted annuity for the fiscal year next  
4 preceding the adjustment date, the adjustment factor shall be  
5 ninety percent of the adjustment factor determined pursuant to  
6 Subparagraph (a) of Paragraph (1) of this subsection;

7 (b) if the percentage increase in the  
8 consumer price index is less than two percent in absolute  
9 value, for a member who has less than twenty-five years of  
10 service credit at retirement and whose annuity is less than or  
11 equal to the median adjusted annuity for the fiscal year next  
12 preceding the adjustment date, and for a member whose annuity  
13 is greater than the median adjusted annuity for the fiscal year  
14 next preceding the adjustment date, the adjustment factor shall  
15 be eighty percent of the adjustment factor determined pursuant  
16 to Subparagraph (a) of Paragraph (1) of this subsection;

17 (c) if the percentage increase in the  
18 consumer price index is greater than or equal to two percent in  
19 absolute value for a member who has twenty-five or more years  
20 of service credit at retirement and whose annuity is less than  
21 or equal to the median adjusted annuity for the fiscal year  
22 next preceding the adjustment date, the adjustment factor shall  
23 be ninety percent of the adjustment factor determined under  
24 Subparagraph (b) of Paragraph (1) of this subsection; and

25 (d) if the percentage increase in the

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1 consumer price index is greater than or equal to two percent in  
2 absolute value, for a member who has less than twenty-five  
3 years of service credit at retirement and whose annuity is less  
4 than or equal to the median adjusted annuity for the fiscal  
5 year next preceding the adjustment date, and for a member whose  
6 annuity is greater than the median adjusted annuity for the  
7 fiscal year next preceding the adjustment date, the adjustment  
8 factor shall be eighty percent of the adjustment factor  
9 determined under Subparagraph (b) of Paragraph (1) of this  
10 subsection; and

11 (4) an annuity shall not be decreased if there  
12 is a decrease in the consumer price index between the next  
13 preceding calendar year and the preceding calendar year.

14 D. A retired member whose benefit is subject to  
15 adjustment under the provisions of the Educational Retirement  
16 Act in effect prior to July 1, 1984 shall have the member's  
17 annuity readjusted annually and cumulatively under the  
18 provisions of that act in effect prior to July 1, 1984 until  
19 July 1 of the year in which the member attains the age of  
20 sixty-five years, when the member shall have the annuity  
21 readjusted annually and cumulatively under the provisions of  
22 this section.

23 E. A member who:

24 (1) retires pursuant to Subsection A of  
25 Section 22-11-23 NMSA 1978 or Subsection A of Section

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1 22-11-23.1 NMSA 1978 after attaining the age of sixty-five  
2 years shall have the member's annuity adjusted as provided in  
3 Subsections B and C of this section commencing on July 1 of the  
4 year following the member's retirement; ~~and~~ or

5 (2) retires pursuant to Subsection A of  
6 Section 22-11-23.2 NMSA 1978 after attaining the age of  
7 sixty-seven years shall have the member's annuity adjusted as  
8 provided in Subsections B and C of this section commencing on  
9 July 1 of the year following the member's retirement.

10 F. A retired member who returns to work and suspends  
11 retirement shall be subject to the provisions of this section as  
12 they exist at the time of the member's ~~final~~ latest  
13 retirement.

14 G. Benefits of a member who is on a disability  
15 status in accordance with Section 22-11-35 NMSA 1978 or a member  
16 who is certified by the board as disabled at regular retirement  
17 shall be adjusted in accordance with Subsections B and C of this  
18 section, except that the benefits shall be adjusted annually and  
19 cumulatively commencing on July 1 of the third full year  
20 following the year in which the member was approved by the board  
21 for disability or retirement.

22 ~~[H. The board shall adjust the benefits of each~~  
23 ~~person receiving an annuity as of June 30, 1999. The adjustment~~  
24 ~~shall be made on July 1, 1999 on the basis of an increase of two~~  
25 ~~dollars (\$2.00) per month for each year since the member's last~~

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1 ~~retirement plus an increase of one dollar (\$1.00) per month for~~  
2 ~~each year of credited service at the time of the last~~  
3 ~~retirement.]"~~

4 SECTION 13. Section 22-11-33 NMSA 1978 (being Laws 1967,  
5 Chapter 16, Section 156, as amended) is amended to read:

6 "22-11-33. EARNED SERVICE CREDIT.--

7 A. Upon a member filing an application for  
8 retirement or disability benefits, earned service credit for the  
9 time of contributory employment shall be certified by the  
10 director and subject to the review of the board.

11 B. A member shall be certified to have earned  
12 service credit for that period of time when ~~[he]~~ the member was  
13 engaged in prior employment. Earned service credit shall not be  
14 certified for that period of employment for which the  
15 contributions have been withdrawn from the fund by the member.

16 C. Earned service credit shall be certified for  
17 periods of employment interrupted for some cause other than  
18 retirement or disability. This shall be done if a member  
19 withdrawing contributions from the fund for this period returns  
20 to the fund, for each year of earned service credit desired, a  
21 sum equal to the member's contribution to the fund during this  
22 period and an additional sum as interest compounded annually  
23 from the date the contributions were withdrawn to the date of  
24 payment of the amount of returned contributions at the rate of  
25 interest set by the board. ~~[These payments may be made in~~

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1 ~~installments, and, if the payments made to the fund are~~  
2 ~~insufficient for the restoration of any full year of earned~~  
3 ~~service credit, the member shall be certified to have acquired~~  
4 ~~earned service credit for that period of time which is~~  
5 ~~proportionate to the payments made.]"~~

6 SECTION 14. Section 22-11-34 NMSA 1978 (being Laws 1967,  
7 Chapter 16, Section 157, as amended) is amended to read:

8 "22-11-34. ALLOWED SERVICE CREDIT.--

9 A. A member shall be certified to have acquired  
10 allowed service credit pursuant to the Internal Revenue Code of  
11 1986 for those periods of time when the member was:

12 (1) employed prior to July 1, 1967 in a  
13 federal educational program within New Mexico, including United  
14 States Indian schools and civilian conservation corps camps.  
15 This service credit shall be allowed without contribution;

16 (2) engaged in military service that  
17 interrupted the member's employment in New Mexico if the member  
18 returned to employment within eighteen months following  
19 honorable discharge. This service credit shall be allowed  
20 without contribution;

21 (3) engaged in United States military service  
22 or the commissioned corps of the public health service from  
23 which the member was honorably discharged; provided that:

24 (a) the member shall have five years or  
25 more of contributory employment to be eligible to purchase

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1 allowed service credit pursuant to this paragraph;

2 (b) the member shall contribute to the  
3 fund, for each year of service credit the member elects to  
4 purchase, a sum equal to the member's average annual actual  
5 salary for the five years preceding the date of the  
6 contribution multiplied by the sum of the member contribution  
7 rate and the employer contribution rate in effect at the time  
8 of the member's written election to purchase, subject to the  
9 federal Uniformed Services Employment and Reemployment Rights  
10 Act of 1994;

11 (c) full payment shall be made in a  
12 single lump sum within sixty days of the date that the member  
13 is informed of the amount of the payment; and

14 (d) the portion of the purchase cost  
15 derived from the employer's contribution rate shall be credited  
16 to the fund and, in the event that a member requests a refund  
17 of contributions pursuant to Section 22-11-15 NMSA 1978, the  
18 member shall not be entitled to a refund of that portion of the  
19 purchase cost derived from the employer contribution rate; or

20 (4) employed:

21 (a) in a public school or public  
22 institution of higher learning in another state, territory or  
23 possession of the United States;

24 (b) in a United States military  
25 dependents' school operated by a branch of the armed forces of

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1 the United States;

2 (c) as provided in Paragraph (1) of this  
3 subsection after July 1, 1967; or

4 (d) in a private school or institution  
5 of higher learning in New Mexico whose education program is  
6 accredited or approved by the department at the time of  
7 employment.

8 B. Effective July 1, 2001, the member or employer  
9 under Paragraph (4) of Subsection A of this section shall  
10 contribute to the fund for each year of allowed service credit  
11 desired an amount equal to the actuarial value of the service  
12 purchased as defined by the board. [~~Payment pursuant to~~  
13 ~~Paragraph (4) of Subsection A of this section may be made in~~  
14 ~~installments, at the discretion of the board, over a period not~~  
15 ~~to exceed one year and, if the sum paid does not equal the~~  
16 ~~amount required for any full year of allowed service credit,~~  
17 ~~the member shall acquire allowed service credit for that period~~  
18 ~~of time that is proportionate to the payment made. Half credit~~  
19 ~~may be allowed without contribution for not more than ten years~~  
20 ~~of the educational service described by Subparagraph (a) of~~  
21 ~~Paragraph (4) of Subsection A of this section if that service~~  
22 ~~was prior to June 13, 1953 and if the member was employed in~~  
23 ~~New Mexico prior to June 13, 1953 in a position covered by the~~  
24 ~~Educational Retirement Act or a law repealed by that act.] No  
25 allowed service credit shall be purchased pursuant to Paragraph~~

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1 (4) of Subsection A of this section unless the member is  
2 currently employed by a local administrative unit.

3 C. No member shall be certified to have acquired  
4 allowed service credit:

5 (1) under any single paragraph or the  
6 combination of only Paragraphs (1) and (4) or only Paragraphs  
7 (2) and (3) of Subsection A of this section in excess of five  
8 years; or

9 (2) in excess of ten years for any other  
10 combination of Paragraphs (1) through (4) of Subsection A of  
11 this section.

12 D. A member receiving service credit under  
13 Paragraph (3) or (4) of Subsection A of this section who  
14 enrolls in the retiree health care authority shall make  
15 contributions pursuant to Subsection C of Section 10-7C-15 NMSA  
16 1978.

17 ~~[E. The provisions of this section are made~~  
18 ~~applicable to the services described prior to as well as after~~  
19 ~~the effective date of the Educational Retirement Act.]"~~

20 SECTION 15. Section 22-11-35 NMSA 1978 (being Laws 1967,  
21 Chapter 16, Section 158) is amended to read:

22 "22-11-35. DISABILITY BENEFIT--ELIGIBILITY--MEDICAL  
23 EXAMINATION.--

24 A. A member shall be eligible for disability  
25 benefits if ~~[he]~~ the member has acquired ten years or more of

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1 earned [~~service-credit~~] service credit and if the board  
2 certifies the member to be totally disabled to continue [~~his~~]  
3 the member's employment and unable to obtain and retain other  
4 gainful employment commensurate with [~~his~~] the member's  
5 background, education and experience.

6 B. Prior to any certification of disability by the  
7 board, the board shall require each applicant for disability  
8 benefits to submit [~~himself to a medical examination by the~~  
9 ~~medical authority~~] medical records as required by the board in  
10 support of the applicant's disability claim."

11 SECTION 16. Section 22-11-36 NMSA 1978 (being Laws 1967,  
12 Chapter 16, Section 159, as amended) is amended to read:

13 "22-11-36. DISABILITY BENEFIT--CONTINUED ELIGIBILITY--  
14 RE-EXAMINATIONS.--

15 A. Unless designated by the [~~medical authority~~]  
16 board as being permanently disabled, to continue to receive  
17 disability benefits, a member shall, on the anniversary date in  
18 each year of [~~his~~] the member's being placed on a disability  
19 status, present [~~himself~~] current medical records to the  
20 medical authority [~~for a medical re-examination~~] in support of  
21 the applicant's continuing disability claim. The medical  
22 authority shall [~~certify to the director after each medical~~  
23 ~~examination whether there is a substantial betterment of the~~  
24 ~~member's disability~~] recommend to the board that the member  
25 either be placed on continuing annual disability or permanent

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1 disability or removed from disability status due to a  
2 substantial betterment of the member's condition. In the event  
3 a substantial betterment of the disability is reported, the  
4 board shall determine whether the member is totally disabled  
5 for employment and unable to obtain and retain other gainful  
6 employment commensurate with ~~[his]~~ the member's background,  
7 education and experience. If the board determines that the  
8 member is no longer disabled, the payment of the disability  
9 benefits shall cease.

10 B. Payment of disability benefits to a member shall  
11 be suspended if ~~[a certificate of medical re-examination by the~~  
12 ~~medical authority is not filed with the director]~~ the member  
13 fails to submit medical records to the medical authority within  
14 thirty days after the date upon which the member should have  
15 ~~[been re-examined]~~ submitted the medical records and where the  
16 failure to ~~[file the certificate]~~ submit the medical records  
17 was due to the unexcused failure or the refusal of the member  
18 to ~~[report for the medical re-examination]~~ do so. Payment of  
19 disability benefits shall be resumed only after the member has  
20 ~~[complied with the requirements of the Educational Retirement~~  
21 ~~Act]~~ submitted current medical records to the board and the  
22 board has determined that the member is totally disabled. A  
23 member shall have no right or claim for benefits withheld  
24 during a period of suspension.

25 C. The board may, in its discretion, require

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1 ~~[further or more frequent medical examinations of members~~  
2 ~~having a disability status.~~

3 ~~D. A member receiving disability benefits who is~~  
4 ~~unable to report for a medical re-examination because of his~~  
5 ~~physical condition or because he resides outside the state~~  
6 ~~shall notify the director of this fact not later than fifteen~~  
7 ~~days in advance of the date for the medical re-examination.~~  
8 ~~The board shall designate a medical doctor in the vicinity of~~  
9 ~~the residence of the member to make the medical re-examination~~  
10 ~~and to report the findings to the board] that the member obtain~~  
11 ~~an independent medical examination; provided that the~~  
12 ~~examination is performed at the board's expense.~~

13 ~~[E.]~~ D. Upon a determination by the board, a  
14 member's status may be changed from permanently disabled to  
15 temporarily disabled or no longer disabled."

16 SECTION 17. Section 22-11-39 NMSA 1978 (being Laws 1967,  
17 Chapter 16, Section 162) is amended to read:

18 "22-11-39. REPORT OF IMPROVED HEALTH--PENALTY.--

19 A. A member receiving disability benefits shall  
20 report to the director in writing any substantial improvement  
21 in ~~[his]~~ the member's disability within thirty days after ~~[he]~~  
22 the member has or reasonably should have knowledge of the  
23 improvement.

24 B. A member failing to report to the director as  
25 required by this section is guilty of a petty ~~[misdemeanor]~~

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1 misdemeanor."

2 SECTION 18. Section 22-11-40 NMSA 1978 (being Laws 1967,  
3 Chapter 16, Section 163) is amended to read:

4 "22-11-40. [REPORTS] RESTORATION TO FUND.--

5 [A. ~~The payment of disability benefits shall be~~  
6 ~~suspended by the director upon notification by the board that~~  
7 ~~the member has failed or refused to make any report required by~~  
8 ~~the board to be made by him. Payment of disability benefits~~  
9 ~~shall be resumed only after the required report is made. The~~  
10 ~~member shall have no right or claim for benefits withheld~~  
11 ~~during a period of suspension.~~

12 B.] If a member is obligated to restore any sum of  
13 money to the fund and fails or refuses to do so for a period of  
14 three months after written demand is made by the director, [he]  
15 the member shall forfeit [his] membership and receive no  
16 further benefits pursuant to the Educational Retirement Act.

17 The director shall determine whether the former member's  
18 contributions to the fund exceed the total amount of disability  
19 or retirement benefits [he] the member has received and shall  
20 withdraw from any such balance of contributions the amount of  
21 money the member is obligated to restore to the fund. Any  
22 balance of the contribution remaining in the fund shall be paid  
23 to the former member or [his] the former member's beneficiary.

24 In the event the money the former member is obligated to  
25 restore to the fund is not restored to the fund, the former

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1 member shall be subject to civil action by the board for its  
2 recovery."

3 SECTION 19. Section 22-11-44 NMSA 1978 (being Laws 1967,  
4 Chapter 16, Section 167) is amended to read:

5 "22-11-44. SAVING CLAUSE--RETIREMENT BENEFITS--DISABILITY  
6 BENEFITS.--

7 A. Any person retired pursuant to the provisions of  
8 any laws repealed by the Educational Retirement Act shall be  
9 considered to have retired pursuant to the Educational  
10 Retirement Act and shall continue to receive retirement  
11 benefits in the same amount as received prior to the enactment  
12 of the Educational Retirement Act.

13 B. Any person receiving disability benefits  
14 pursuant to any laws repealed by the Educational Retirement Act  
15 shall continue to receive disability benefits in the same  
16 amount as received prior to the enactment of the Educational  
17 Retirement Act and shall be considered to have been granted  
18 disability benefits pursuant to and be subject to the  
19 provisions of the Educational Retirement Act.

20 C. Nothing in the Educational Retirement Act shall  
21 be construed to adversely affect any benefits being paid  
22 pursuant to any laws repealed by the Educational Retirement Act  
23 or any laws establishing the public employees retirement  
24 association [~~of New Mexico~~].

25 D. No person who was [~~heretofore~~] covered under the

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underscoring material = new  
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1 provisions of any statute repealed by the Educational  
2 Retirement Act shall be retired at a monthly benefit [~~which~~  
3 that is less than [~~he~~] the person would have received had [~~his~~]  
4 the person's employment continued to be performed under such  
5 repealed provisions."

6 SECTION 20. REPEAL.--Sections 22-11-18 and 22-11-45 NMSA  
7 1978 (being Laws 1971, Chapter 73, Section 1 and Laws 1967,  
8 Chapter 16, Section 168) are repealed.

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SENATE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCES; ALLOWING A MUNICIPALITY TO  
ESTABLISH A MUNICIPAL POST-EMPLOYMENT LIFE INSURANCE BENEFITS  
TRUST.

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

SECTION 1. [NEW MATERIAL] MUNICIPAL POST-EMPLOYMENT LIFE  
INSURANCE BENEFITS TRUST.--

A. A municipal post-employment life insurance  
benefits trust may be established, maintained and used by a  
municipal treasurer with the advice and consent of the  
municipal board of finance.

B. The municipality's contributions to the  
municipal post-employment life insurance benefits trust shall  
be irrevocable, and the money in the trust shall be dedicated  
exclusively to funding post-retirement life insurance benefits

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1 pursuant to the provisions of the trust established by the  
2 municipal treasurer.

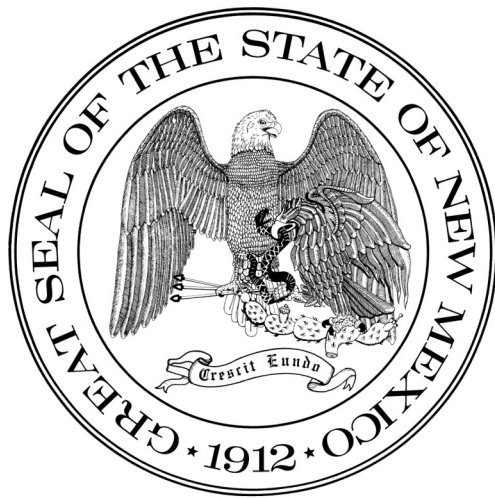
3 C. Money in a municipal post-employment life  
4 insurance benefits trust shall be invested pursuant to the  
5 Uniform Prudent Investor Act and the provisions of this  
6 section. Earnings and income from investment of money in the  
7 trust shall be credited to the trust.

8 D. The municipal treasurer shall serve as the  
9 trustee and may use the services of a trust company to manage  
10 the investment of money in the municipal post-employment life  
11 insurance benefits trust.

12 E. As used in this section:

13 (1) "municipal post-employment life insurance  
14 benefits trust" means an investment fund established,  
15 maintained and used by a municipality exclusively for the  
16 purposes permitted under Section 115 of the Internal Revenue  
17 Code of 1986; and

18 (2) "trust company" means an individual or a  
19 company, corporation, firm, partnership, state-chartered bank,  
20 national bank or other legal entity that provides investment  
21 services pursuant to the Trust Company Act and that agrees to  
22 adhere to the provisions of the Uniform Prudent Investor Act.



LEGISLATIVE COUNCIL SERVICE  
SANTA FE, NEW MEXICO